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# Understanding the Judicial Conference Committee on International Judicial Relations

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**UNDERSTANDING THE JUDICIAL  
CONFERENCE COMMITTEE ON  
INTERNATIONAL JUDICIAL RELATIONS**

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HON. NANETTE K. LAUGHREY\*\*

*Since 1993, the Judicial Conference Committee on International Judicial Relations has coordinated outreach and exchange activities of the federal judiciary in support of rule-of-law initiatives. While the Federal Judicial Center has endeavored to publicize the Committee's work, and members of the Committee have on occasion written and spoken about their work for the Committee, the scholarly treatment of the Committee remains sparse. What discussion does exist in the academic literature tends to depict the Committee in one of two ways. First, the Committee formed in response to the emergence of newly independent states after the 1991 Soviet collapse. Those states flooded the U.S. federal judiciary with requests for assistance in establishing judicial systems, and the federal judiciary needed a dedicated body to respond. Second, the Committee is the natural extension of judges' participation in rule-of-law assistance and cooperation programs that date to the Founding Era. Writing as law professors and as a participant in the Committee's work, we write to offer a third view of the Committee, one that emphasizes its role as an education- and research-oriented body that not only fosters the exchange of judges,*

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*their ideas, practices, and ultimately their role in well-functioning democracies but also as an organization committed to research into comparative judicial administration, transnational legal education curriculum development, and the characteristics of judicial independence and impartiality. Based on a thorough review of its curriculum and exchange activities, interviews with current and former members of the Committee, and more broadly the literature on comparative judicial education, this Article sheds light on the unique role of the Judicial Conference Committee on International Judicial Relations in promoting judicial education, effectiveness, and transparency.*

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## I. INTRODUCTION

The Judicial Conference Committee on International Judicial Relations (Committee or IJRC) is the central coordinating body for requests for assistance and judicial expertise received by U.S. federal judges every year. Global interest in U.S. judicial expertise is substantial.

“In 2012, the Supreme Court of the United States received more than 800 visitors representing over 95 countries,” and more than 150 judges and court officials visited the U.S. District Court for the District of Massachusetts alone.<sup>1</sup> In 2013, “51 foreign delegations consisting of 706 visitors received substantive briefings . . . on key aspects of the federal judicial system, including the structure, operation, and administration of the federal courts, the Judicial Conference, the courts’ interactions with the media and general public, the rule-making process, and the federal judicial appointment process.”<sup>2</sup> “Twenty-eight of the delegations, consisting of 166 international judges and court officials from Egypt, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Turkey, and Ukraine, traveled to the United States” through one of the Committee’s partnership programs with the Library of Congress.<sup>3</sup> Many of these judges “participate in extended professional exchanges as interns or ‘guest research judges’” who study “U.S. judicial practice, observe different phases of court proceedings, and learn about the legal research and judgment drafting process” as it functions in the U.S. federal system.<sup>4</sup>

Members of the Committee and other federal judges who work with it also participate in exchanges, missions, and educational conferences in other countries. The Committee has coordinated efforts to facilitate judicial reform in Russia and newly independent states emerging after the collapse of the Soviet Union;<sup>5</sup> assisted in the reconstruction of judicial institutions in post-genocide societies;<sup>6</sup> and participated in international fora with judges from Algeria, Bangladesh, Canada, China, France, Indonesia, Israel, Jordan, Kenya, Malaysia, Morocco, The Netherlands,

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1. Mira Gur-Arie, *Judges Coming Together: International Exchanges and the U.S. Judiciary*, in THE U.S. SUPREME COURT: EQUAL JUSTICE UNDER THE LAW 23, 23 (Nicholas S. Namba ed., 2013), [http://photos.state.gov/libraries/amgov/30145/publications-english/1303\\_USSupremeCourt\\_English\\_Digital.pdf](http://photos.state.gov/libraries/amgov/30145/publications-english/1303_USSupremeCourt_English_Digital.pdf) [perma.cc/9AVL-4Q6U].

2. *Judges and Court Staff: Annual Report 2013*, U.S. Cts., <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/annual-report-2013/judges-and-court-staff.aspx> [perma.cc/WSX5-CCMG] (last visited Oct. 1, 2015).

3. *Id.*

4. Gur-Arie, *supra* note 1, at 24.

5. *Taking a Personal Commitment to Justice to the World*, THIRD BRANCH (Office of Pub. Affairs, Washington, D.C.), Dec. 2008, at 1, 10.

6. E.g., Vicki Miles-LaGrange, *Access to Justice: Judicial Reform in Rwanda*, EJOURNAL USA, Dec. 2005, at 20, 20–21, [http://photos.state.gov/libraries/korea/49271/dwoa\\_120909/ijde1205.pdf](http://photos.state.gov/libraries/korea/49271/dwoa_120909/ijde1205.pdf) [perma.cc/BJ8N-84DQ].

Niger, Nigeria, Pakistan, Saudi Arabia, and Turkey<sup>7</sup> on developing practices to handle counterterrorism cases while respecting the rule of law, to name only three of the Committee's many activities undertaken over the past two decades.

To the extent the work of the Judicial Conference Committee on International Judicial Relations has been effectively assessed in the academic literature, judges and scholars have tended to depict the Committee in one of two ways.<sup>8</sup> The first portrayal is as the natural extension of a relatively unbroken tradition dating back to the early days of the nation's history of international judicial cooperation and responses to requests for assistance from abroad.<sup>9</sup> These activities were always part of the U.S. tradition of promoting the "rule of law" at home and abroad. So Michael Mihm and Cynthia Hall opened their seminal history of the Committee thusly, "The federal judiciary of the United States, from the Chief Justice on down, has always been interested in rendering assistance to judiciaries from other countries."<sup>10</sup> Judge D. Brooks Smith of the U.S. Court of Appeals for the Third Circuit situated the work of the Committee in a rule-of-law culture in the United States dating back well before the Revolutionary War and emphasized that "a common misperception exists that programs promoting the rule of law and democracy abroad are a recent development. They are not."<sup>11</sup> In this view, the formation of the Judicial Conference Committee on International Judicial Relations simply built upon a rule-of-law tradition in which federal judges had long participated.

The second depiction of the Committee focuses on the 1991 Soviet collapse and the sudden demand for advice on how to establish and sustain independent judiciaries of which U.S. federal judges had

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7. Office of the Spokesperson, *GCTF Seminar on the Judiciary in Handling Counterterrorism Cases Within a Rule of Law Framework*, U.S. DEP'T ST. (Nov. 14, 2013), <http://www.state.gov/r/pa/prs/ps/2013/11/217591.htm> [perma.cc/S8WV-9DVB].

8. See, e.g., Janet K. Levit, *U.S. Judicial Conference International Judicial Relations Committee Prepares for Semi-Annual Meeting*, OPINIO JURIS (Nov. 20, 2006), <http://opiniojuris.org/2006/11/20/us-judicial-conference-international-judicial-relations-committee-prepares-for-semi-annual-meeting/> [perma.cc/Y8UY-MLDQ] (noting that the Committee has not been extensively covered in the scholarly literature).

9. Cynthia H. Hall & Michael H. Mihm, *The History of the Committee on International Relations of the United States Judicial Conference*, 42 ST. LOUIS U. L.J. 1163 (1998).

10. *Id.*

11. D. Brooks Smith, *Promoting the Rule of Law and Respecting the Separation of Powers: The Legitimate Role of the American Judiciary Abroad*, 7 AVE MARIA L. REV. 1, 1-2, 5 (2008).

extraordinarily extensive knowledge.<sup>12</sup> Judge Myron Bright noted that “[s]ince 1994, the International Judicial Relations Committee, a committee of the United States Judicial Conference, has had as its primary goal the promotion of the democratic rule of law.”<sup>13</sup> Of the Committee’s mission, U.S. District Judge Paul Magnuson stated that

the Committee serves as a central point of contact for the federal Judiciary with the numerous agencies and institutions involved with international judicial reform and the rule of law. . . .

. . . Since the collapse of communism in Eastern Europe in the early 1990s, there has been an extraordinary increase in attention paid to the constitutional and administrative underpinnings of the U.S. judicial system.<sup>14</sup>

Then-Chief Justice William Rehnquist agreed, remarking that “[a]fter the collapse of the Soviet Union, many of the newly independent states in Eastern Europe began to establish democratic institutions and sought information about our legal system.”<sup>15</sup> In this view, the formation and work of the Committee were more or less spontaneous and shaped by major shifts caused by the abrupt emergence of new democracies and requests from those democracies for judicial expertise.<sup>16</sup>

To be sure, the U.S. federal judiciary has a great deal to contribute to any discussion of the rule of law. The Committee’s self-identified mandate is to “coordinate[] the federal judiciary’s relationship with foreign judiciaries and with . . . agencies and organizations that are involved in . . . expansion of the rule of law and the administration of

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12. For a comprehensive discussion of U.S. efforts to aid former Soviet republics, see CURT TARNOFF, CONG. RESEARCH SERV., RL32866, U.S. ASSISTANCE TO THE FORMER SOVIET UNION (2007), <https://www.fas.org/sgp/crs/row/RL32866.pdf> [perma.cc/AM3L-7TWQ].

13. Myron H. Bright, *The Judicial Observation Program for International Law Students, Lawyers, and Judges*, 20 PENN ST. INT’L L. REV. 47, 47 (2001).

14. *International Courts Tap Judicial Expertise*, THIRD BRANCH (Office of Pub. Affairs, Washington, D.C.), May 2001, at 9, 9–10.

15. William Rehnquist, Chief Justice, Remarks of the Chief Justice: Court of Appeals for the Federal Circuit 20th Anniversary Judicial Conference (Apr. 8, 2002), [http://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp\\_04-08-02a](http://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp_04-08-02a) [perma.cc/6XSE-AXER].

16. Paul R. Dubinsky, *Is Transnational Litigation a Distinct Field? The Persistence of Exceptionalism in American Procedural Law*, 44 STAN. J. INT’L L. 301, 305 (2008) (“The American bench had adapted to fluctuating patterns in world trade, to changes in the United States’ economic and political stature, and to occasional calls for the U.S. legal system to cooperate more closely with foreign courts.”).

justice.”<sup>17</sup> The United States has one of the longest traditions of judicial independence, which, at the federal level, is constitutionally enshrined.<sup>18</sup> U.S. federal and state judiciaries are transparent and operate with rare incidences of corruption.<sup>19</sup> International indexes uniformly rate the U.S. federal judiciary as one of the most open, predictable, and independent in the world.<sup>20</sup> Since its creation twenty years ago, the International

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17. COMM. INT’L JUDICIAL RELATIONS, A RESOURCE FOR THE JUDICIARIES OF OTHER NATIONS (2002), [http://www.fjc.gov/public/pdf.nsf/lookup/IJR00012.pdf/\\$file/IJR00012.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/IJR00012.pdf/$file/IJR00012.pdf) [perma.cc/85NK-FKMD].

18. Martin H. Redish, *Advocacy of Unlawful Conduct and the First Amendment: In Defense of Clear and Present Danger*, 70 CALIF. L. REV. 1159, 1186 (1982) (noting the United States’ long history of judicial independence); see also THE FEDERALIST NO. 78, at 226–29, 231–32 (Alexander Hamilton) (Roy P. Fairfield ed., 1981) (arguing that the tenure features of Article III would help “secure a steady, upright, and impartial administration of the laws”; prevent “encroachments and oppressions of the representative body”; authorize the courts to enforce, as is “peculiarly essential in a limited Constitution,” limitations on legislative authority, such as “that it shall pass no . . . *ex-post-facto* laws” and to “ascertain [the] meaning” of the Constitution and other laws, because “[t]he interpretation of the laws is the proper and peculiar province of the courts”; and help “guard the Constitution and the rights of individuals from the effects of those ill humors, which . . . sometimes disseminate among the people themselves; and which . . . have a tendency . . . to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community”).

19. Sidney B. Brooks, *Building Blocks for a Rule of Law*, COLO. LAW., Dec. 2007, at 19, 22 (“[C]orruption in our judicial system is very rare. We have an honest and trusted judiciary, but it is only the result of sustained and vigorous efforts to eliminate corruption.”); Katrina Hoch, *Judicial Transparency: Communication, Democracy and the United States Federal Judiciary* 8 (2009) (unpublished Ph.D. dissertation, University of California San Diego), <http://escholarship.org/uc/item/44g491tk> [perma.cc/DJU5-R7QN] (“Transparency can help build judicial legitimacy and prevent corruption. These dynamics are supported by published opinions and open trials. Transparency can thus work for the judiciary when it serves to diminish arbitrary power, but not when it serves to strengthen the link between citizens’ wishes and government actions. The public may observe and feel confidence in the justice system, but cannot exert influence or checks.”). Judicial corruption was one of the most important themes in interviews with both Committee members and with judges who had worked with the IJRC, although no interviewee provided a definition of conduct that counted as “corrupt.” For the purposes of this Article, we adopt the definition provided by Herbert Igbanugo:

Judicial corruption may be defined as acts or omissions that constitute the use of public authority for the private benefit of judges, court personnel, and other justice sector personnel that result in the improper and unfair delivery of judicial decisions. Such acts include bribery, theft of public funds, extortion, intimidation, influence pedaling, the abuse of court procedures for personal gain, and any inappropriate influence on the impartiality of the judicial process by an actor within the court system.

Herbert A. Igbanugo, *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa’s Nation States*, A.B.A. INT’L L. NEWS, Summer 2013, at 19, 19.

20. Andrea Stone, *World Justice Project Rule of Law Index Ranks 66 Countries on Governments, Rights*, HUFFINGTON POST (June 12, 2011),

Judicial Relations Committee has generated an extraordinary wealth of information on judicial governance, independence, and accountability; judicial ethics and discipline; court administration and organization; case management; civil and criminal procedure; alternative dispute resolution; jury selection and administration; bankruptcy process; budget and financial management; relations with other political branches and the media; judicial selection; and, our focus here, judicial education and training.<sup>21</sup> The character of these activities has shifted in response to the global changes in the pressures facing democracies generally: from the Committee's early days when it was, in essence, trying to help new democracies establish the necessary infrastructure for independent and effective judiciaries to current pressures involving the balance between individual civil liberties and public security, even in well-functioning democracies.<sup>22</sup>

Although there is good evidence in support of either of these images of the Committee, in this Article we offer a third explanatory alternative for the Committee's formation and its subsequent work—one that does not stretch so far back as the early days of the Republic, but one that reaches instead to the growth of judicial institutions working in partnership with the Legislative and Executive Branches to promote judicial learning, self-assessment, self-study, and, ultimately, understanding of the characteristics of judicial independence and impartiality.

In this Article, we focus on the Committee's work in the field of legal education generally and judicial education, ethics, impartiality, and independence specifically. While it is certainly true that the Committee's work promotes the rule of law, it has also served as an engine for curricular innovation for both lawyers and judges; established an institutional knowledge library to store the experiences of judges when

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[http://www.huffingtonpost.com/2011/06/13/rule-of-law-index-world-justice-project\\_n\\_875595.html](http://www.huffingtonpost.com/2011/06/13/rule-of-law-index-world-justice-project_n_875595.html) [perma.cc/2437-8ER3] ("The report gave the United States high marks overall, saying it 'stands out for its well-functioning system of checks and balances and for its good results in guaranteeing civil liberties among its people, including the rights of association, opinion and expression, religion, and petition.'" (quoting THE WORLD JUSTICE PROJECT, RULE OF LAW INDEX 23 (2011), [http://worldjusticeproject.org/sites/default/files/WJP\\_Rule\\_of\\_Law\\_Index\\_2011\\_Report.pdf](http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_Law_Index_2011_Report.pdf) [perma.cc/YK83-NHUN])).

21. COMM. INT'L JUDICIAL RELATIONS, *supra* note 17.

22. See Jimmy Gurule, The Role of the Judiciary in Handling Counterterrorism Cases Within a Rule of Law Framework Conference in Washington, D.C. (Nov. 14, 2013), [http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1001&context=law\\_faculty\\_lectures](http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1001&context=law_faculty_lectures) [perma.cc/UMB5-ASJQ].



they interact with foreign counterparts, organizations, and foundations promoting judicial independence; and discovered and elaborated upon characteristics of efficient, honest, and independent judges and the systems under which they thrive.<sup>23</sup> By emphasizing the Committee's self-reflective and scholarly approach to its work, we suggest that the Committee not only plays a critical role in the promotion of the rule of law, but does so consistently with a much longer tradition of education and research that dates back to early efforts to improve the functioning of courts and, thus, the democratic process. Viewed in this way, the increased and systematized participation of judges in exchanges, education, and teaching activities across borders is a logical step in a continuing effort by federal judges to learn as much as possible about the relationship between judicial administration, assessment, competence, education, integrity, performance, and selection to articulate, and thus fulfill, their constitutional roles.

Part II of this Article provides a brief history of the IJRC and how its members are chosen as well as the general nature of its activities. Part III situates the Committee in the history of judicial efforts to study and systematically collect and analyze judicial administration and performance data for improvement of the judicial process. Part IV locates the IJRC within the longer tradition of education and research activities undertaken by the federal judiciary. Part V provides a brief conclusion.

## II. THE HISTORY AND FUNCTION OF THE JUDICIAL CONFERENCE COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

### A. *The IJRC's Origin and Structure*

The Committee on International Judicial Relations was formed in 1993 at the suggestion of the Executive Committee Chairman, Chief Judge Gil Merritt of the U.S. Court of Appeals for the Sixth Circuit.<sup>24</sup> His suggestion came in response to increased requests for assistance and

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23. See Daniel Terris et al., *Toward a Community of International Judges*, 30 LOY. L.A. INT'L & COMP. L. REV. 419, 420 (2008) ("Although this community is not formally organized, there is a growing sense among judges that they constitute a coherent professional group, seeing one another 'not only as servants and representatives of a particular polity, but also as fellow professionals in [a common judicial enterprise] . . .'" (quoting Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARV. INT'L L.J. 191, 193 (2003))).

24. *Taking a Personal Commitment to Justice to the World*, *supra* note 5, at 10; see also Rehnquist, *supra* note 15.

information on how to establish a judiciary from former Soviet Bloc nations following the collapse of the U.S.S.R. in 1991.<sup>25</sup> Many of those nations—Armenia, Azerbaijan, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan—attempted to establish entirely new governmental institutions consistent with democratic principles and asked for help with developing fair and independent judicial systems.<sup>26</sup> Judge Merritt suggested that the Committee make recommendations to the Federal Judicial Center on three areas of international interest: (1) judicial exchange programs; (2) “programs to assist courts in foreign countries”; and (3) ways to “serve as a conduit for communications on matters of mutual concern between the American federal judiciary, foreign courts, and international judicial organizations.”<sup>27</sup> The original Committee members chose to focus the Committee’s work on facilitating training and education, court-structured administration, judicial independence, establishment of jury systems, improvement of criminal justices systems, and development of professional associations.<sup>28</sup>

The members of the Committee are appointed by the Chief Justice of the Supreme Court<sup>29</sup> and represent<sup>30</sup> Article I and Article III judges, a designee of the Secretary of State, and a member of the academic community.<sup>31</sup> The Committee members divide responsibility according to geographic region, staying current with requests for assistance and monitoring Committee activities: (1) Europe; (2) Central and South America and the Caribbean; (3) Asia and the Pacific Basin; and (4) Africa and the Middle East.<sup>32</sup> Each group of Committee members then reports

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25. See *Taking a Personal Commitment to Justice to the World*, *supra* note 5, at 10.

26. *Id.*; see also Adrienne Cheasty, *The Revenue Decline in the Countries of the Former Soviet Union*, FIN. & DEV., June 1996, at 32, 33 tbl.1 (listing countries of the former U.S.S.R.).

27. Hall & Mihm, *supra* note 9, at 1163.

28. *Id.* at 1167.

29. Judith Resnick & Theodore Ruger, *One Robe, Two Hats*, N.Y. TIMES, July 17, 2005, at 13, 13 (“In essence, the chief justice is the chief executive officer of a bureaucracy of some 1,200 life-tenured judges, 850 more magistrate and bankruptcy judges, and a staff of 30,000. He is the chair of the policy-setting body—the Judicial Conference of the United States—that establishes the priorities for the federal judiciary, including overseeing its budget, now about \$5.43 billion annually. The chief justice appoints the director of the Administrative Office of the United States Courts and, together, they select the judges who sit on judicial committees focused on topics from technology to international judicial relations.”).

30. Hall & Mihm, *supra* note 9, at 1166.

31. *Taking a Personal Commitment to Justice to the World*, *supra* note 5, at 10.

32. Hall & Mihm, *supra* note 9, at 1166–67.

information and activities for that region to the rest of the Committee.<sup>33</sup> Committee members with special language or regional expertise also assist other members as needed.<sup>34</sup> In addition to the regular members, other federal and state judges work with Committee programs on a volunteer basis; however, both volunteers and member judges always prioritize regular judicial duties.<sup>35</sup>

Judge Michael M. Mihm was appointed as the first chair of the newly formed Committee in 1993.<sup>36</sup> The other original Committee members were drawn from various districts and circuits across the nation: Judge Sidney Brooks of the Colorado Bankruptcy Court, Chief Judge Lloyd George of the District of Nevada, Judge Thomas Reavley of the Fifth Circuit, Judge Juan Torruella of the First Circuit, Judge Cynthia Hall of the Ninth Circuit, and Judge Nathaniel Jones of the Sixth Circuit.<sup>37</sup> Professor Edward Re, who formerly served as the Chief Judge of the Court of International Trade, was appointed as the academic member of the Committee, and Assistant Secretary of State John Shattuck served as the Secretary of State's designee.<sup>38</sup>

Judge Mihm was succeeded as the Committee chair by Judge Cynthia A. Hall in 1995,<sup>39</sup> followed by Judge Paul A. Magnuson in 1999,<sup>40</sup> Judge Robert Henry in 2005,<sup>41</sup> Judge Charles R. Simpson III in 2008,<sup>42</sup> Diarmuid

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33. *Id.* at 1166.

34. *See id.* at 1167.

35. *See* Hall & Mihm, *supra* note 9, at 1167; Richard L. Fruin, Jr., *Judges Working to Improve Justice Systems Abroad*, JUDGES' J., Summer 2003, at 5, 5 (detailing how judicial members of a delegation were assembled to assist with the establishment of rule-of-law institutions in post-Hussein Iraq); Levit, *supra* note 8.

36. Hall & Mihm, *supra* note 9, at 1165.

37. *Id.* at 1166.

38. Hall & Mihm, *supra* note 9, at 1166; Rehnquist, *supra* note 15 ("The members of [the Judicial Conference Committee on International Judicial Relations] have participated in exchanges and education programs all over the world. One of the original members of the Committee was former Chief Judge Edward Re, of the Court of International Trade. Members of our Court have also participated in exchanges with a number of countries, including Great Britain, Russia, Canada, France, Italy, India and Germany.").

39. Hall & Mihm, *supra* note 9, at 1177.

40. *See* Toni M. Fine, *Introduction and Overview—Working Together: Developing Cooperation in International Legal Education*, 20 PENN ST. INT'L L. REV. 1, 2 (2001).

41. Press Release, Oklahoma City University News, OCU Names Judge Robert H. Henry as 17th President (Dec. 10, 2009), <http://www2.okcu.edu/news?id=3391> [perma.cc/7WH4-2SPN].

42. *Id.*; *see also* Report of the Proceedings of the Judicial Conference of the United States 4 (2010) (stating that Judge Simpson's term as the Committee chair ended in 2010).

F. O'Scannlain of the Ninth Circuit in 2010, and then by the current chair, Allyson Kay Duncan.<sup>43</sup> The Committee is supported by permanent staff at the International Judicial Relations Office of the Federal Judicial Center.<sup>44</sup> Previous Committee members have included Judge Myron H. Bright of the Eighth Circuit, who served as the co-chair for the Committee's Taskforce on Education,<sup>45</sup> and Judge J. Clifford Wallace of the Ninth Circuit, who used his tenure on the Committee to publish a number of studies detailing the important advances the Committee had made in the field of judicial administration and education.<sup>46</sup>

### B. *The Rule-of-Law Mandate*

The Committee's primary mission is to serve as a resource for the establishment and expansion of the rule of law and for the administration of justice worldwide.<sup>47</sup> Committee members' duties involve coordinating the federal judiciary's relationship with foreign courts and judges, with government organizations, and with non-government organizations that work toward legal reform; assisting with the development of international programs; working with delegations of foreign judges visiting the United States; and locating and recruiting domestic judges with particular areas of expertise or language skills to participate in training programs abroad.<sup>48</sup>

"Rule of law" is well recognized as a nebulous concept in the economic, human rights, legal, and political science literature.<sup>49</sup> The

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43. Diarmuid F. O'Scannlain, *The Rule of Law and the Judicial Function in the World Today*, 89 NOTRE DAME L. REV. 1383, 1383 (2014); *Committee Chairs Begin Terms October 1, 2015*, U.S. CTS. (Oct. 1, 2015), <http://www.uscourts.gov/news/2015/10/01/committee-chairs-begin-terms-october-1-2015> [perm a.cc/G384-QRLE].

44. *See Judge Writes First Benchbook for Afghanistan*, THIRD BRANCH (Office of Pub. Affairs, Washington, D.C.), Nov. 2008, at 1, 2.

45. Fine, *supra* note 40, at 2.

46. J. Clifford Wallace, *Comparative Perspectives on the Office of Chief Justice*, 38 CORNELL INT'L L.J. 219, 221 (2005).

47. *Taking a Personal Commitment to Justice to the World*, *supra* note 5, at 10.

48. *Id.*

49. Beginning as early as ancient Athens (and according to many scholars well before), philosophers debated what features a just polity must possess and, primarily, whether it should be ruled by educated or even elite stewards or by laws applicable to all citizens. *See, e.g.*, PLATO, *THE STATESMAN* (Julia Annas & Robin Waterfield eds., Robin Waterfield trans., Cambridge University Press 1995); John C. H. Wu, *The Struggle Between Government of Laws and Government of Men in the History of China*, 5 CHINA L. REV. 53 (1932). The issue is made even more complex in the context of the relationship between development and the rule of law. The World Bank has determined that

Universal Declaration of Human Rights, the historic international recognition that all human beings have fundamental rights and freedoms, states that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law” without further elaboration on what the rule of law entails.<sup>50</sup> Legal philosopher Ronald Dworkin has more closely tied the concept of the rule of law to judicial institutions:

[T]he “rights” conception [of the rule of law] . . . assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognized in positive law, so that they may be enforced *upon the demand of individual citizens* through courts or other judicial institutions of the familiar type, so far as this is practicable. The rule of law on this conception is the ideal of rule by an accurate public conception of individual rights.<sup>51</sup>

Dworkin’s account, while providing some additional substance to the rule of law, nevertheless leaves unaddressed many aspects of the relationship between the rule of law and judicial institutions.<sup>52</sup> Governmental and non-governmental organizations have drafted extensive checklists related to rule of law and judicial transparency without any clear indication of which, if any, of the items on the checklists

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[i]t is widely believed that well-functioning law and justice institutions and a government bound by the rule of law are important to economic, political and social development. As a result, practitioners in the development field have turned increasing attention to reforms intended to improve law and justice institutions. However, many of the assumptions underlying law and justice reform efforts have not been subject to rigorous questioning, theorizing, or testing. The lack of well-developed conceptual and empirical underpinnings is a serious concern, especially in light of past efforts to reform legal institutions—most notably the Law and Development Movement of the 1960s—that are widely believed to have failed due to flawed or insufficient theoretical foundations.

*Rule of Law and Development*, WORLD BANK, <http://go.worldbank.org/9OTC3P5070> [perma.cc/PDD6-2PAB] (last visited Oct. 2, 2015).

50. G.A. Res. 217 (III) A, Universal Declaration of Human Rights at 71 (Dec. 10, 1948).

51. RONALD DWORKIN, A MATTER OF PRINCIPLE 11–12 (1985).

52. See Judith Shklar, *Political Theory and the Rule of Law*, in THE RULE OF LAW: IDEAL OR IDEOLOGY 1, 12 (Allan C. Hutchinson & Patrick Monahan eds., 1987); Thomas Carothers, *Promoting the Rule of Law Abroad: The Problem of Knowledge* 8, 12 (Carnegie Endowment for Int’l Peace, Working Paper No. 34, 2003), <http://carnegieendowment.org/files/wp34.pdf> [perma.cc/BP94-LVKB]; see also G.A. Res. 67/1, ¶ 13 (Nov. 30, 2012); Jeremy Waldron, *Is the Rule of Law an Essentially Contested Concept (in Florida)?*, 21 LAW & PHIL. 137, 139 (2002).

must be met to pass the threshold of a society governed by “the rule of law.”<sup>53</sup> The Department of State and the U.S. Agency for International Development define the rule of law as “a principle under which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated, and which are consistent with international human rights principles.”<sup>54</sup> As the American Bar Association quipped, “[t]he *rule of law* is a term that is often used but difficult to define.”<sup>55</sup>

One of the important contributions of the Committee from the perspective of judicial learning is the influence of its work on the broader conceptual debate surrounding the “rule of law.” Noting the disagreement he had experienced among the judges with whom he interacted during his time as the Committee’s chair, Diarmuid O’Scainnlain analyzed the World Justice Project’s *Rule of Law Index* against the history of Western development of the rule-of-law idea from Plato to the American Founders.<sup>56</sup> Among other insights, O’Scainnlain explained that, while both procedural and substantive rights must be guaranteed under any society ordered by the rule of law, the decision as to which substantive rights must be protected (e.g., religion, assembly, privacy, and labor) necessarily implicated whether or not a written constitution was required as a component of the rule of law (the *Index* suggests only a fundamental law and avoids the word “constitution” altogether) and that the role of the judiciary in a rule-of-law system was similarly affected by the power to declare executive and legislative acts in

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53. See, e.g., HENDERSON, ET AL., INT’L FOUND. FOR ELECTORAL SYS., JUDICIAL TRANSPARENCY CHECKLIST: KEY TRANSPARENCY ISSUES AND INDICATORS TO PROMOTE JUDICIAL INDEPENDENCE AND ACCOUNTABILITY REFORMS (2003), [http://www.ifes.org/sites/default/files/state\\_of\\_the\\_judiciary\\_report\\_indicators\\_en.pdf](http://www.ifes.org/sites/default/files/state_of_the_judiciary_report_indicators_en.pdf) [perma.cc/ES3V-UECZ].

54. U.S. DEP’T OF STATE, STANDARDIZED PROGRAM STRUCTURE AND DEFINITIONS 22 (2010), <http://www.state.gov/documents/organization/246744.pdf> [perma.cc/J483-6UE8]. This is the standard definition used within the current framework for U.S. foreign assistance. Activities that focus on peace and security projects, such as counternarcotics and transnational crime, are not included in this definition, even if they include training judges, lawyers, and prosecutors. See SHAWNA WILSON, FED. JUDICIAL CTR., U.S. RULE OF LAW ASSISTANCE: A GUIDE FOR JUDGES (2011), [http://www.fjc.gov/public/pdf.nsf/lookup/RulLaw11.pdf/\\$file/RulLaw11.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/RulLaw11.pdf/$file/RulLaw11.pdf) [perma.cc/65K2-D4L6].

55. DIV. FOR PUB. EDUC., AM. BAR ASS’N, DIALOGUE ON THE RULE OF LAW 4 (2008), <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/FinalDialogueROL.PDF.authcheckdam.pdf> [perma.cc/B4RF-5HFJ].

56. O’Scainnlain, *supra* note 43, at 1386, 1390–94.

breach of fundamental law.<sup>57</sup> O'Scannlain nevertheless concluded that many forms of government might adequately protect the rule of law as long as systemic features like separation of powers and orderly transitions of power were preserved.<sup>58</sup>

The Committee's conceptual contributions, collectively or individually, are not always so broad. Judge Robert Henry noted that one of the insights about the rule of law in the United States that became more pronounced to him as a result of his work for the Committee was having lawyers participate in the process of judicial selection.<sup>59</sup> In his view, less measurable aspects of good judges like collegiality and temperament are best assessed through a transparent window between candidacy and confirmation in which attorneys participate. In the U.S. context, lawyers from the American Bar Association, the White House Counsel's office, U.S. Senate committees, and the Federal Bureau of Investigation all participate in federal judicial candidacies.<sup>60</sup> Other judges have addressed the ways that separation of powers principles adapt in specific contexts like national security to ensure maintenance of the rule of law.<sup>61</sup>

Although the Committee is driven by, and contributes to, theoretical debates surrounding the rule of law, especially the judiciary, its work is fundamentally pragmatic and functional. The Committee undertakes work with the full range of institutions that ultimately shape the rule of law, including training institutes for attorneys, police, and judges; bar associations and other professional organizations; law schools; and the administrative personnel at many levels who manage the process of civil and criminal adjudication as well as less formal means of dispute resolution.<sup>62</sup> For example, one of the Committee's successes was the

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57. *Id.* at 1399–1400 (“The fundamental law *does* rule, however, when, even though the government has by a certain act trespassed its limits, the judiciary—exercising the duty vested in it by that same document and, by extension, the people—steps in and declares the trespassory act to be what it is: a nullity.”).

58. *Id.* at 1400.

59. Interview with Judge Robert Henry (May 19, 2014) (on file with author). The Authors note that the *Marquette Law Review* has not had the opportunity to review any interview materials.

60. STANDING COMM. ON THE FED. JUDICIARY, AM. BAR ASS'N, WHAT IT IS AND HOW IT WORKS (2009), [http://www.americanbar.org/content/dam/aba/migrated/scfedjud/federal\\_judiciary09.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/scfedjud/federal_judiciary09.authcheckdam.pdf) [perma.cc/K8KX-22HM].

61. *Laughrey Travels Abroad*, U.S. CTS.: W. DIST. OF MO., [http://www.mow.uscourts.gov/courthouse\\_connection/september\\_2011/backpage\\_laughrey\\_travels\\_abroad.htm](http://www.mow.uscourts.gov/courthouse_connection/september_2011/backpage_laughrey_travels_abroad.htm) [perma.cc/99JM-C56H].

62. *See id.*; *see also* Daniel Blegen, 2011 *Joseph E. Stevens Aspire to Excellence*

decision by the city of Pushkin, Russia to adopt a docketing system which filed motions under the name of the broader dispute instead of by the specific type of motion (e.g., a child visitation motion would be docketed under the name of the parents' dispute rather than in a separate docket for all child visitation motions).<sup>63</sup> The city did so after observing how motions within disputes were logged in the U.S. federal system.<sup>64</sup>

### C. The IJRC's Partners

In order to meet the demands of requests for assistance from the many stakeholders in the rule-of-law system, the Committee works with a wide range of foundations, agencies, and rule-of-law organizations. The Judicial Conference Executive Committee carefully scrutinizes the origin and processes by which its activities are funded (the Committee never uses funds appropriated by Congress for the operation of the federal courts) to ensure compliance with the Code of Conduct for United States Judges.<sup>65</sup> Funding from the U.S. Agency for International Development, for example, is channeled under an interagency agreement with the Judicial Conference.<sup>66</sup> The use of the funds is approved by the Executive Committee of the Judicial Conference and administered by the Administrative Office.<sup>67</sup> The Federal Judicial Center, the Administrative Office, and the Administrative Assistant to the Chief Justice all play significant advisory roles to aid the Committee's research in the development and administration of its projects.<sup>68</sup>

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*Award*, KC COUNS., Nov. 2011, at 14, 15; *U.S. Judge Talks on Transparency and Efficiency in Judiciary*, EMBASSY U.S. (Apr. 4, 2011), [http://turkey.usembassy.gov/us\\_judge\\_transparency.html](http://turkey.usembassy.gov/us_judge_transparency.html) [perma.cc/64XQ-VJD2].

63. CHEMONICS INT'L INC., U.S. AGENCY FOR INT'L DEV., SUPPORTING RUSSIA'S JUDICIAL REFORM: INNOVATION, EFFICIENCY, AND PARTNERSHIPS: RUSSIA JUDICIAL REFORM AND PARTNERSHIPS PROGRAM FINAL REPORT 21-23 (2008), [http://pdf.usaid.gov/pdf\\_docs/PDACM559.pdf](http://pdf.usaid.gov/pdf_docs/PDACM559.pdf) [perma.cc/4PX5-VSYY].

64. *Id.* at 23.

65. Hall & Mihm, *supra* note 9, at 1171-72; Smith, *supra* note 11, at 13, 21.

66. See OFFICE OF INSPECTOR GEN., U.S. AGENCY FOR INT'L DEV., AUDIT REPORT NO. 9-000-01-006-P, AUDIT OF USAID'S MONITORING OF INTERAGENCY ARRANGEMENTS WITH THE DEPARTMENT OF STATE AND OTHER FEDERAL AGENCIES 41 (2001), <http://oig.usaid.gov/sites/default/files/audit-reports/9-000-01-006-p.pdf> [perma.cc/KM9K-27HF] (noting agreements between USAID and the Judicial Conference).

67. Hall & Mihm, *supra* note 9, at 1171-72, 1185.

68. See 148 CONG. REC. 233-35 (2002).



The Committee also partners with a variety of groups and organizations to share support and expertise.<sup>69</sup> Two such organizations are United States law schools and the American Bar Association's Rule of Law Initiative (ROLI).<sup>70</sup> Law schools are sources of information, and they often have a role to play as part of exchange<sup>71</sup> and observation programs.<sup>72</sup> The Committee makes its resources, particularly its database of judges, available to the American Bar Association's ROLI program on a regular basis.<sup>73</sup> In 2012, Judge O'Scannlain facilitated the Committee's membership into the World Bank's Global Forum on Law, Justice and Development, which connects World Bank participant countries, think tanks, regional and international organizations, international financial institutions, and civil society organizations with relevant research and practice to support development initiatives.<sup>74</sup> The program supports collaborative research and technical assistance between relevant actors including those who play a part in societies with robust rule-of-law protections.<sup>75</sup>

*D. The IJRC's Role Within U.S. Efforts to Promote the Rule of Law*

In the early years of the Committee's formal work, substantial resources were invested in Russian judicial reform, assisting in the implementation of a jury system, and coordinating exchanges between Russian judicial officers and American judicial officials.<sup>76</sup> Similarly, the

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69. Hall & Mihm, *supra* note 9, at 1185–86.

70. *Id.* at 1186.

71. *Id.*

72. *See generally* Bright, *supra* note 13.

73. Hall & Mihm, *supra* note 9, at 1186.

74. Letter from Diarmuid F. O'Scannlain, U.S. Circuit Judge for the Ninth Circuit Court of Appeals & Chair, Judicial Conference Comm. on Int'l Judicial Relations and Jeremy D. Fogel, U.S. Dist. Judge for the N. Dist. of Cal. & Dir., Fed. Judicial Ctr. to Anne-Marie Leroy, Sr. Legal Vice-President & Grp. Gen. Counsel, The World Bank (June 13, 2012), (on file with the *Marquette Law Review*).

75. *Vision*, GLOBAL F. ON L., JUST. & DEV., <http://globalforumljd.org/about-us/vision> [perma.cc/9DKZ-Y3JF] (last visited Jan. 2, 2016).

76. *See, e.g.*, ADMIN. OFFICE, U.S. CTS., ACTIVITIES OF THE COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS 1 (1999), <http://siteresources.worldbank.org/INT/LAWJUSTINST/Resources/InternationalRelCommittee.pdf> [perma.cc/2F2X-2MPN] (“The Committee has devoted substantial effort to assisting the Russian Federation in building an independent and efficient judiciary. In 1993 and 1994, the Committee sponsored four programs in this country to assist the Russian judiciary in implementing its newly authorized jury system. Over the last five years, the Committee has received a number of Russian judicial officers who have traveled to this country to understand better the management and administration of the U.S. federal judicial system. At the same time Committee members and staff have traveled to

Committee provided significant assistance to former Soviet republics in establishing judicial systems and assisting in establishing mechanisms for efficient and independent judicial administration.<sup>77</sup> In 1995, the Committee also coordinated a meeting between supreme court justices from member states of the Organization of American States, analyzing “judicial independence, due process, the organization of justice in the 21st Century, judicial ethics, and the relationship of international courts to national courts.”<sup>78</sup>

Thus understood, it makes sense to conceive of the Committee and its activities as a relatively new player in broader efforts to share the U.S. judicial experience with foreign counterparts and to study other countries’ judicial experience as well. But such efforts were under way long before 1993.<sup>79</sup> Indeed, when he was appointed first Minister to Mexico after the United States recognized its independence from Spain, Joel R. Poinsett was instructed to “express the compliment felt by the United States in that the Mexican states” had looked to the U.S. Constitution’s separation of powers principles in drafting its 1824 Constitution and to “show an unobtrusive readiness to explain” the U.S. constitutional experience.<sup>80</sup> Poinsett came to the diplomatic position after aiding in constitutional drafting and separation of powers principles in newly independent Chile.<sup>81</sup> In selecting John Jay as the first Chief

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Russia to meet with Russian judicial officers to provide on-site guidance to policy makers. Over the past several years, the Russian judiciary has made significant progress towards achieving an independent judiciary. It has now separated from the Ministry of Justice, the prosecutorial arm of the Russian government, and has modeled its new institutions closely on those of the U.S. federal judiciary. The courts of general jurisdiction, for example, now have a Council of Judges—similar to the U.S. Judicial Conference—to set policy for the judiciary. In 1997, the Duma created a Judicial Department, an administrative arm of the Russian courts that is modeled after the Administrative Office of the U.S. Courts.”).

77. *Id.* at 2.

78. *Id.* at 3.

79. Rehnquist, *supra* note 15.

80. WILLIAM R. MANNING, *EARLY DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND MEXICO* 46–47 (1916).

81. STEPHEN F. KNOTT, *SECRET AND SANCTIONED: COVERT OPERATIONS AND THE AMERICAN PRESIDENCY* 110 (1996) (“Poinsett . . . became an ‘authorized councilor’ to the president of the junta and assisted in the drafting of the provisional constitution of 1812 . . .”); MICHAEL O’BRIEN, *CONJECTURES OF ORDER: INTELLECTUAL LIFE AND THE AMERICAN SOUTH, 1810–1860*, at 196 (2004) (“Late in 1811, [Poinsett] traveled from Buenos Aires whose junta was (in his judgment) too circumspect, across the Pampas and over the Andes to Chile. There he found a more ambitious junta, led by Jose Miguel Carrera, in rebellion and glad to welcome the first foreign emissary to reach Santiago. . . . [Poinsett] offered Carrera the draft of a constitution for a liberated Chile . . .”).

Justice of the U.S. Supreme Court, George Washington considered Jay's experience not only as a former chief judge in New York but also his tenure as a minister in France and Spain and his knowledge of English law (the practice and procedure of which Jay subsequently tailored to Supreme Court norms, which were themselves informed by the "simpler tastes of republican America").<sup>82</sup>

United States federal judges and other government officials sporadically participated in hosting judicial delegations and in encouraging executive, legislative, and judicial overtures to help build judicial institutions in countries that requested assistance throughout the nineteenth and twentieth centuries.<sup>83</sup> The effort became more systematic and sustained with the era of decolonization that followed World War II.<sup>84</sup> During the 1960s and 1970s, the "law and development movement" firmly tied notions of credible written constitutions, independent

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82. Herbert A. Johnson, *John Jay and the Supreme Court*, 81 N.Y. HIST. 59, 61, 69 (2000); Natalie Wexler, *In the Beginning: The First Three Chief Justices* 154 U. PA. L. REV. 1373, 1382–83 (2006) ("On a more positive note, Jay had—like Wilson and Rutledge—distinguished himself in service to his country, both as president of the Continental Congress and as one of the authors of *The Federalist Papers*. Unlike these other two candidates, however, much of Jay's experience had been in the realm of foreign affairs: he had served as minister to Spain from 1779 to 1783, helped to negotiate the Treaty of Paris that ended the Revolutionary War, and held the post of secretary of foreign affairs under the Articles of Confederation. It was assumed by many, in fact, that Jay would hold the analogous post of secretary of state under the new federal government—and indeed, as noted earlier, he apparently seriously considered it. While experience in foreign affairs is no longer considered important in a candidate for Chief Justice, in the circumstances of the 1790s it conferred certain advantages. The United States was still a fledgling nation, struggling to gain recognition from the established European powers—recognition that would be furthered by the appointment of a Chief Justice who was personally known to some of the leading European players. In addition, some of the most important questions expected to come before the Court—notably, the question of whether the 1783 peace treaty required Americans to repay debts to British creditors that had been contracted before the Revolution—implicated foreign interests, and might be better resolved by a Chief Justice with a diplomatic background. More generally, given the expectation that Jay would function as at least an informal adviser to the President, Washington undoubtedly wanted to install someone as Chief Justice whom he knew well and whose judgment he trusted—two criteria met by Jay.").

83. William Howard Taft, for example, left his judicial position on the U.S. Court of Appeals for the Sixth Circuit to serve as Governor General of the Philippines where he oversaw judicial reform as part of a broader transition from military to civilian administration. *William Taft: Life Before the Presidency*, MILLER CTR. PUB. AFF., <http://millercenter.org/president/taft/essays/biography/2> [perma.cc/3DSR-2KWS] (last visited Oct. 2, 2015).

84. See Thomas F. Geraghty & Emmanuel K. Quansah, *African Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to a Neglected Means of Securing Human Rights and Legal Predictability*, 5 LOY. U. CHI. INT'L L. REV. 87, 93 (2007).

judiciaries, and respect for individual rights to the economic and social future of newly independent states that lacked many of the civil institutions credited with helping European and North American states progress.<sup>85</sup>

Yet during this time there was not a sustained, organized body within the judiciary that oversaw federal judges' participation in rule-of-law initiatives. Instead, judges were invited on an ad hoc basis by precursors to the same institutions that support the Committee's work today.<sup>86</sup> The Ford Foundation, for example, made rule-of-law initiatives a core part of its development funding strategies, and it frequently did so in partnership with judges, lawyers, and academics who shared the vision of newly democratized states empowered by the establishment of strong judicial institutions.<sup>87</sup>

So the Committee does in fact have roots in American founding principles that established a close connection between the rule of law, separation of powers, and judicial independence. It is also true that the establishment of the Judicial Conference Committee on International Judicial Relations coincided with a sudden and substantial increase in requests for assistance for American judicial expertise.<sup>88</sup> This is why histories of the Committee that emphasize its roots in the Founding Era and in the collapse of the Soviet Union are both fair characterizations. But the establishment of the Committee also gave rise to more systematic efforts to collect, store, and, within proper constitutional limits, share judges' experiences with others.<sup>89</sup> It also spawned curricular innovations

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85. Geraghty & Quansah, *supra* note 84, at 88 ("In the 1960s and 1970s, it was thought by many legal educators in the United States that law schools in Africa could play a key role in developing a cadre of able, ethical, and effective leaders."); Carothers, *supra* note 52, at 6.

86. See generally JOHN SEAMAN BAINBRIDGE, *THE STUDY AND TEACHING OF LAW IN AFRICA* (1972); Joel Samoff & Bidemi Carrol, *The Promise of Partnership and Continuities of Dependence: External Support to Higher Education in Africa*, 47 AFR. STUD. REV. 67 (2004); Julio Faundez, *Legal Reform in Developing and Transition Countries: Making Haste Slowly*, 2001 LAW, SOC. JUST. & GLOBAL DEV., [http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2000\\_1/faundez](http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2000_1/faundez) [perma.cc/UW54-UL3K].

87. Hugo Frühling, *From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America*, in MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 55, 70 (Mary McClymont & Stephen Golub eds., 2000); Susan L. Karamanian, *The American Society of International Law's First Century: 1906–2006* By Frederic L. Kirgis, 102 AM. J. INT'L L. 384, 386 (2008) (book review).

88. FED. JUDICIAL CTR., *FEDERAL JUDICIAL CENTER ASSISTANCE TO OTHER NATIONS TO IMPROVE THE ADMINISTRATION OF JUSTICE* (2015), <http://www2.fjc.gov/sites/default/files/2015/Assistance-to-Other-Nations-2014-08.pdf> [perma.cc/6NJ2-L7CK].

89. Glenn Robert Lawrence, *Are We Exporting Our Legal System?*, 41 FED. B. NEWS &

for both judges and lawyers; focused attention on the aspects of the U.S. constitutional experience that supported transparency, impartiality, and independence; encouraged federal judges to confer with each other; and, through what can only be described as a consensus-driven process, establish the criteria by which the Committee would measure not only decisions to provide assistance but also to measure how successful those activities were.<sup>90</sup> The Committee, of course, is not, nor has it ever asserted itself to be, the gatekeeper for judicial support for rule-of-law initiatives.<sup>91</sup> Indeed, substantial activity takes place outside of its coordinating staff and members.<sup>92</sup> But the influence of the Committee on the relationship between the rule of law as an “unqualified human good” and the role of

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J. 672, 677 (1994).

90. See TIM KOOPMANS, COURTS AND POLITICAL INSTITUTIONS: A COMPARATIVE VIEW 250 (2003) (“[T]he chief characteristic distinguishing the courts from the political institutions is judicial independence: independence from government and from political leadership, independence from political parties and the latest political fashion, independence from popular feelings.”).

91. See, e.g., Robert G.M. Keating, *The New York State Judicial Institute: Transforming the Educational World of the Judiciary*, N.Y. ST. B. ASS’N J., May 2005, at 10 (noting the establishment of the New York State Judicial Institute and its international activities).

92. Peggy Ochandarena & Louise Williams, *Federal Judicial Involvement in International Development*, JUDGES’ J., Summer 2003, at 11, 12 (“Although the Committee does not serve as a gateway or mandatory stop for federal judges who are invited to provide international assistance, it is a source of information and support for those who do.”); see also Slaughter, *supra* note 23, at 199 (detailing a range of federal judges’ activities including the extensive activities of Sandra Day O’Connor); Heike P. Gramckow, *Judges and Courts Abroad: Different Systems, Similar Problems*, JUDGES’ J., Summer 2003 at 7, 7 (“In addition to short-term assistance that generally involves very specific, targeted activities for two or three weeks or a few months, the [National Center for State Courts] currently has permanent offices in Croatia, Kosovo, Mexico, Mongolia, and Nigeria. A small staff of U.S. experts and local staff, often supported by short-term professionals, may work in a country for several years to provide assistance for fundamental justice system reforms. Finding the right individuals to create the right mix of experience and passion for this very demanding work, often under less than ideal conditions, is one of the many challenges that NCSC’s International Division faces.”); *International Judicial Monitor*, INT’L JUD. ACAD., <http://www.judicialmonitor.org/current/index.html> [perma.cc/3EZP-2362] (last visited Jan. 2, 2016) (detailing the International Judicial Academy’s international judicial training and education activities); *Office of Overseas Prosecutorial Development Assistance and Training*, U.S. DEP’T JUST., <http://www.justice.gov/archive/iraq/opdat.htm> [perma.cc/HW2L-D2Y3] (last updated Apr. 2015) (“The OPDAT Iraq Program currently has ten Resident Legal Advisors (RLAs) working in support of the rule of law mission. These RLAs are deployed to Provincial Reconstruction Teams (PRTs) in Iraq provinces. The RLAs work with the Embassy, the Higher Judicial Council, the Central Criminal Court of Iraq, provincial courts, and other justice sector institutions on a variety of issues related to criminal justice, the rule of law, and other matters involving the delivery of justice to the citizens of Iraq.”).

independent judges in its establishment and preservation is unmistakable.<sup>93</sup>

### III. THE HISTORY OF SELF-STUDY IN THE FEDERAL JUDICIARY

For this reason, we suggest that the Committee's establishment and work be understood as part of a movement shared by federal judges, Congress, and the Executive Branch dating to the early years of the twentieth century that encouraged judges to observe, analyze, meet, debate, and ultimately manage the judicial process, including its administration.<sup>94</sup> Understanding that movement, and, therefore, the Committee as a recent incarnation of it, is critical to understanding why the Committee works the way it does, as well as to understanding the context in which it was born and, frankly, has thrived.

Prior to the establishment of the Federal Judicial Center, the education and research agency for the federal courts, Congress established the Conference of Senior Circuit Judges in 1922 for the purpose of reporting on the state of the docket in each circuit, providing information for the movement and placement of judges, and advising on the ways and means of improving judicial administration within the circuits.<sup>95</sup> Congress did so after a decade of public debate on judicial

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93. Daniel H. Cole, 'An Unqualified Human Good': *E.P. Thompson and the Rule of Law*, 28 J. L. & SOC'Y 177, 178 (2001) ("[The] law did not keep politely to a 'level' but was at [every] bloody level; it was imbricated within the mode of production and productive relations themselves (as property-rights, definitions of agrarian practice) and it was simultaneously present in the philosophy of Locke; it intruded brusquely within alien categories, reappearing bewigged and gowned in the guise of ideology; it danced a cotillion with religion, moralising over the theatre of Tyburn; it was an arm of politics and politics was one of its arms; it was an academic discipline, subjected to the rigour of its own autonomous logic; it contributed to the definition of the self-identity both of rulers and of ruled; above all, it afforded an arena for class struggle, within which alternative notions of law were fought out." (quoting E.P. THOMPSON, *THE POVERTY OF THEORY: OR AN ORRERY OF ERRORS* 130 (1995))).

94. Harlington Wood, Jr., *Judiciary Reform: Recent Improvements in Judicial Administration*, 44 AM. U. L. REV. 1557, 1558 (1995) ("The federal judiciary, a coequal and independent branch of government under Article III of the U.S. Constitution, must have a strong administrative support structure in order to fulfill its important constitutional functions properly." (footnote omitted)).

95. Russell Wheeler, *Empirical Research and the Politics of Judicial Administration: Creating the Federal Judicial Center*, 51 LAW & CONTEMP. PROBS. 31, 34 (1988); see also STEVEN HARMAN WILSON, *THE U.S. JUSTICE SYSTEM: AN ENCYCLOPEDIA* 918 (2012) ("The establishment of an annual Conference of Senior Circuit Judges, later to be known as the Judicial Conference of the United States, provided the first formal mechanism by which members of the federal judiciary might develop national administrative policies, reassign judges temporarily, and recommend legislation. Chief Justice William Howard Taft (a former U.S. President appointed to

reform focusing on the large backlog of cases resulting from World War I and Prohibition that had invited more extreme suggestions for abolishment of life tenure and restriction of lower federal court jurisdiction.<sup>96</sup> Establishing a permanent group of federal judges dedicated to researching the state of the judiciary and recommending measures for its improvement was viewed as critical both to resolve the administrative difficulties then encountered and also to preserve the fundamental independence of the judiciary.<sup>97</sup> This group was later expanded to include the Chief Justice, the chief justice of each circuit, a district judge from each regional circuit, and the chief judge on the Court of International Trade and renamed the Judicial Conference of the United States (the Judicial Conference).<sup>98</sup> In 1939, “Congress passed the Administrative Office Act of 1939, creating the Administrative Office of the United States Courts to provide for the administration of the federal courts.”<sup>99</sup> The Administrative Office assumed the administrative powers like accounting, budgeting, personnel, and procurement, which were formerly managed by the Department of Justice.<sup>100</sup> In addition, the

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the Supreme Court in 1921) had led a public campaign for federal judicial reform since leaving the White House in 1913. Congress in 1922 enacted a new form of court administration that advanced the institutionalization of an independent judiciary by establishing an annual conference of the chief justice and the senior circuit court judge (now called the chief judge) from each judicial circuit and charged the conference with a general mandate to offer advice on the administrative needs of the federal courts.”).

96. William G. Ross, *The Hazards of Proposals to Limit the Tenure of Federal Judges and to Permit Judicial Removal Without Impeachment*, 35 VILL. L. REV. 1063, 1071–72 (1990) (“During this period, members of Congress introduced numerous proposals for the election of federal judges for limited terms. Many of these measures were merely enabling laws that would have permitted Congress to establish terms of office for federal judges. Others were more specific and provided for election of judges and limited their tenure of office for periods that ranged from six to fifteen years. For example, Walter Clark, an associate justice of the North Carolina Supreme Court, proposed a plan in 1896 whereby the Chief Justice of the United States would be elected in the same manner as the President, and the nation would be divided into election districts for the selection of associate Justices.” (footnotes omitted)); *see also* Tara Leigh Grove, *The Exceptions Clause as a Structural Safeguard*, 113 COLUM. L. REV. 929, 932 (2013) (“For example, in the late nineteenth and early twentieth centuries, the federal judiciary was viewed as biased in favor of big business. Thus, populists and progressives sought to strip federal jurisdiction or otherwise curtail federal judicial power, while economic conservatives (who favored the judiciary’s pro-business rulings) blocked those court-curbing efforts.”); *Landmark Judicial Legislation: Conference of Senior Circuit Judges 1922*, FED. JUD. CTR., [http://www.fjc.gov/history/home.nsf/page/landmark\\_14.html](http://www.fjc.gov/history/home.nsf/page/landmark_14.html) [perma.cc/PG69-ZWAA] (last visited Oct. 2, 2015).

97. Wheeler, *supra* note 95, at 34–35.

98. *Id.* at 36.

99. Wood, *supra* note 94, at 1562 (footnote omitted).

100. *Id.*

Administrative Office became responsible for monitoring and overseeing the U.S. Probation System.<sup>101</sup> The efforts of the Judicial Conference were primarily achieved through committees of judges and lawyers appointed by the Chief Justice, and, in the 1950s, the mission of the Judicial Conference was expanded to include research and education.<sup>102</sup> Today, “building security, courtroom technology, clerk’s office staffing, rules of practice and procedure, and even courthouse design” are among the activities and responsibilities overseen by the Judicial Conference.<sup>103</sup>

In the 1950s and early 1960s, the Judicial Conference and the Administrative Office turned increasingly to problems confronting the federal judiciary at the same time that they organized educational programs to assist judges in managing growing and complicated caseloads.<sup>104</sup> There was, however, no permanent staff or financial support for these research and educational programs.<sup>105</sup> Even after Congress established seventy-three new judgeships in 1961,<sup>106</sup> the federal judiciary remained overworked.<sup>107</sup> “A growing number of judges and members of the bar urged the judiciary to establish the formal means to bring improved research and education to the courts.”<sup>108</sup> In 1966, the Judicial Conference authorized a special committee to investigate the need for congressional approval to provide broad continuing education, training, research, and administration programs.<sup>109</sup> The studies of the committee

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101. *Administrative Oversight and Accountability*, U.S. CTS., <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/administrative-oversight-accountability.aspx> [perma.cc/DU8Z-UKT8] (last visited Oct. 2, 2015).

102. JUDITH RESNICK & DENNIS CURTIS, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS 155–56 (2011).

103. Anthony J. Scirica, *The Judicial Conference of the United States: Where Federal Court Policy Is Made*, FED. LAW., Oct. 2009, at 28, 28; see also Wood, *supra* note 94, at 1561 (“Although it was not set up as a controlling entity with managerial power, the Judicial Conference proved to be an important first step toward an integrated administrative system. It fostered communications among the courts, as well as the sharing of efficient and effective management procedures. Under the powerful leadership of Chief Justice Taft and later Chief Justice Charles Evans Hughes, the Judicial Conference became the principal policymaking body for the federal courts.”).

104. *Landmark Judicial Legislation: Federal Judicial Center Act 1967*, FED. JUD. CTR., [http://www.fjc.gov/history/home.nsf/page/landmark\\_18.html](http://www.fjc.gov/history/home.nsf/page/landmark_18.html) [perma.cc/2LNQ-NLNC] (last visited Oct. 2, 2015).

105. *Id.*

106. 17 CONGRESSIONAL QUARTERLY ALMANAC 372 (1961).

107. *Landmark Judicial Legislation: Federal Judicial Center Act 1967*, *supra* note 104.

108. *Id.*

109. *Id.*



and judicial lobbying led President Johnson to recommend that Congress create a Federal Judicial Center to facilitate self-analysis, research, and planning by the courts to create a more effective judicial system.<sup>110</sup> Following this recommendation, the Federal Judicial Center was officially established by Congress in December of 1967<sup>111</sup> with three primary goals: (1) research on the operations of the courts, (2) provide judicial education, and (3) provide system development to improve judicial administration through modern techniques and technologies.<sup>112</sup>

The Federal Judicial Center has been directed by Judge Jeremy Fogel since 2011,<sup>113</sup> and it conducts extensive research and provides educational services to judges.<sup>114</sup> Most of its research topics are recommended by Congress's Judicial Conference committees who reach out to the Federal Judicial Center because of its reputation as being professional, neutral, and highly informed.<sup>115</sup> Some research topics are also raised by the Federal Judicial Center itself.<sup>116</sup> The Federal Judicial Center's educational topics are determined by its educational advisory committees as well as through suggestions from the circuit conferences.<sup>117</sup> In order to cover as many topics that are important to the various federal districts, the membership of the educational advisory committee is drawn from

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110. Wheeler, *supra* note 95, at 39 (citing Special Message to Congress on Crime in America, 1 PUB. PAPERS 134, 143 (Feb. 6, 1967)).

111. Act of Dec. 20, 1967, Pub. L. No. 90-219, § 620, 81 Stat. 664, 664 (1967) (providing for the establishment of a Federal Judicial Center and for other purposes).

112. *Id.*

113. *Fogel Selected to Head Federal Judicial Center*, THIRD BRANCH (Office of Pub. Affairs, Washington, D.C.), July 2011, at 2, 2.

114. *FJC Changes to Serve Judiciary*, THIRD BRANCH (Office of Pub. Affairs, Washington, D.C.), Sept. 2008, at 1, 10.

115. *Id.*

116. See, e.g., MOLLY TREADWAY JOHNSON ET AL., FED. JUDICIAL CTR., EXPERT TESTIMONY IN FEDERAL CIVIL TRIALS: A PRELIMINARY ANALYSIS (2000), [http://www.fjc.gov/public/pdf.nsf/lookup/ExpTesti.pdf/\\$file/ExpTesti.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/ExpTesti.pdf/$file/ExpTesti.pdf) [perma.cc/TR4Q-FDYK].

117. The Federal Judicial Center's education advisory committees are further specialized. For example, there is a bankruptcy advisory committee as well as an advisory committee that is district judge specific. See *Bankruptcy Clerk Singled Out for Recognition*, BANKR. CT. DECISIONS WKLY. NEWS & COMMENT, Nov. 2, 2008, at 9, 9; AM. BAR ASS'N SECTION OF LITIG., 1 DIRECTORY OF FEDERAL COURT GUIDELINES § 1C-85 (2015). A complete list of the Federal Judicial Center's advisory committees is available at FED. JUDICIAL CTR., ANNUAL REPORT 2013 15-16 (2013), [http://www.fjc.gov/public/pdf.nsf/lookup/AnnRep13.pdf/\\$file/AnnRep13.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/AnnRep13.pdf/$file/AnnRep13.pdf) [perma.cc/5HQ2-JJKV].

judges all over the country who are interested in education.<sup>118</sup> The Federal Judicial Center provides many seminars for domestic judges both in the traditional, in-person format as well as through online materials and video streaming.<sup>119</sup> These seminars cover topics such as management skills, and the Federal Judicial Center has also produced other materials such as brochures on classified evidence; webcasts that facilitate interaction between judges; and resources covering federal death penalty cases, case management issues for terrorism cases, and international law subjects.<sup>120</sup>

The Federal Judicial Center's international activities primarily consist of providing information to foreign countries and judiciaries to help improve the administration of justice both in the United States and abroad.<sup>121</sup> The Federal Judicial Center works with foreign courts and judicial training centers on technical assistance projects abroad such as education programs with foreign justice academies, caseload tracking and reporting assessment, and judicial reform assessments.<sup>122</sup> It also maintains a database to identify judges and other court officials in the United States with particular areas of expertise to help with rule-of-law or court reform projects.<sup>123</sup> Most of the Federal Judicial Center's international programming is developed and administered by the IJRC.<sup>124</sup>

Indeed, the relationship between the federal judiciary and the Federal Judicial Center in promoting judicial exchange and rule-of-law activities predated the formation of the Committee.<sup>125</sup> In 1988, the 100th Congress created within the Judicial Conference a fifteen-member Federal Courts Study Committee and directed it to "make a complete study of the

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118. See FED. JUDICIAL CTR., *supra* note 117, at 15.

119. See, e.g., MANUAL FOR COMPLEX LITIGATION (FOURTH) (2004), [http://www.fjc.gov/public/pdf.nsf/lookup/MCL40000.pdf/\\$file/MCL40000.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/MCL40000.pdf/$file/MCL40000.pdf) [perma.cc/5AQ8-79X5]; KAREN L. PROCHNIEWSKI, INST. FOR COURT MGMT., FILLING A NEED: STRATEGIC TRAINING FOR FRONTLINE CLERK'S OFFICE STAFF 4 (2014) ("The Administrative Office of the U.S. Courts and Federal Judicial Center offer career development programs at the leadership, management, and court unit executive levels . . ."), <http://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2014/Strategic%20Training%20for%20Clerks%20Office%20Staff.ashx> [perma.cc/47AK-H6GL].

120. See FED. JUDICIAL CTR., *supra* note 117, at 5.

121. FED. JUDICIAL CTR., *supra* note 88.

122. *Id.*

123. *Id.*

124. Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103, 1122–23 (2000).

125. FED. JUDICIAL CTR., *supra* note 88; Gur-Arie, *supra* note, 1 at 24.

courts.”<sup>126</sup> The Federal Courts Study Committee “included members of the Federal executive, legislative, and judicial branches and representatives from state governments, universities and private practice,” all of whom worked toward the goal of developing a long-range plan for the judicial system.<sup>127</sup> While the Federal Courts Study Committee then as is now known for more controversial aspects of its mandate, the Committee’s recommendations for the Federal Judicial Center took note of the increased requests for judicial assistance, which resulted in Congress amending the statute of the Federal Judicial Center and instructing it to

cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to [the administration of justice in the courts of the United States].<sup>128</sup>

#### IV. THE JUDICIAL CONFERENCE COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS AS AN EDUCATION AND RESEARCH ORGANIZATION

##### A. *Contributions to Judicial Administration*

As noted in Part II, the Committee engages in a wide range of activities and partnerships to fulfill its mandate, but for purposes of

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126. Wood, *supra* note 94, at 1570–71 (quoting FED. COURTS STUDY COMM., REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 31 (1990), [http://www.fjc.gov/public/pdf.nsf/lookup/repfcsc.pdf/\\$file/repfcsc.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/repfcsc.pdf/$file/repfcsc.pdf) [perma.cc/UP9M-FC5G]). See generally George D. Brown, *Nonideological Judicial Reform and Its Limits—The Report of the Federal Courts Study Committee*, 47 WASH. & LEE L. REV. 973 (1990); Levin H. Campbell, *Into the Third Century: Views of the Appellate System from the Federal Courts Study Committee*, 74 MASS. L. REV. 292 (1989); Cris Carmody, *Federal Courts Study Committee Issues Final Report*, 74 JUDICATURE 51 (1990); Roger J. Miner, *Planning for the Second Century of the Second Circuit Court of Appeals: The Report of the Federal Courts Study Committee*, 65 ST. JOHN’S L. REV. 673 (1991); William K. Slate II, *Report of the Federal Courts Study Committee: An Update*, 21 SETON HALL L. REV. 336 (1991).

127. Slate II, *supra* note 126, at 337 n.5.

128. Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 602(a)(3), 106 Stat. 4506, 4514 (1992); Gur-Arie, *supra* note 1, at 24. Congress considered similar measures across the federal government. For example, it also amended the mandate of the Administrative Conference of the United States to include assistance to newly independent states. See *The Federal Courts Study Committee Implementation Act of 1991: Hearings Before the Subcomm. on Courts and Admin. Practice of the Comm. on the Judiciary*, 102d Cong. 24 (1991).

assessing the Committee's contributions to judicial learning and promotion of judicial knowledge, it undertakes three general types of curriculum and educational activities.

In order to improve the efficiency and consistency of judicial administration throughout the world, the Committee and the Federal Judicial Center have been instrumental in developing and running several programs that facilitate dialogue and learning between the United States and foreign judges. These programs include the Foreign Judicial Fellows Program,<sup>129</sup> judicial exchange programs,<sup>130</sup> and the Open World Program.<sup>131</sup> Many of the Committee's programs include discussions and presentations regarding how changes due to improvements in technology, introduction of alternative dispute resolution, political and economic changes, and increases in the use of technical evidence can affect the administration of justice.<sup>132</sup> In addition, programs usually include comparative discussions of how different jurisdictions deal with practical administration problems and how they implement changes and solutions to account for all the actions of court officials associated with such changes.<sup>133</sup> They also encourage the education of court employees to ensure efficiency in the courts from all participants in the judicial process, not only judges.<sup>134</sup> For judges specifically, Committee members and other volunteers have developed modules and educational materials for court administration and organization; electronic docket entry and management; how to efficiently organize disputes for efficient disposition; case management; civil and criminal procedure; alternative dispute resolution; jury selection and administration; bankruptcy process; budget and financial management; and relations with other political branches and the media.<sup>135</sup>

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129. See *FJC Changes to Serve Judiciary*, *supra* note 114, at 11.

130. See Rehnquist, *supra* note 15.

131. Smith, *supra* note 11, at 18; *Program Information*, OPEN WORLD LEADERSHIP CTR., <http://openworld.gov/about-us/program-information> [perma.cc/732X-KTN4] (last visited Oct. 3, 2015).

132. Juan R. Torruella & Michael M. Mihm, *To Promote and Strengthen Judicial Independence and the Rule of Law in the Hemisphere*, 40 ST. LOUIS U. L.J. 969, 975 (1996).

133. *Id.* at 976.

134. *Id.* at 981.

135. See *id.* at 975.

The Foreign Judicial Fellows Program, established in 1992,<sup>136</sup> brings judges and legal scholars from other nations to the Federal Judicial Center for periods of one to six months in order to research an area related to judicial administration.<sup>137</sup> The participants must be fluent in written and spoken English and “plan a specific research project relating to the U.S. legal system, judicial practice, or court education.”<sup>138</sup> In addition, he or she must also secure independent funding from his or her own resources or through private donors, scholarships, or their home government.<sup>139</sup> As part of the program, participants are provided with an office, computer access, and staff assistance with research.<sup>140</sup> In addition, the Federal Judicial Center arranges meetings between the participants and federal judges, court staff, and other members of the judicial community.<sup>141</sup> Participants also have the opportunity to attend workshops and conferences, observe court proceedings, and visit law schools.<sup>142</sup>

For example, a relatively recent fellow, Judge Abdul Saboor Hashimi, focused his research on creating a draft of a benchbook to provide guidance on preparing for and conducting criminal trials in Afghanistan’s courts.<sup>143</sup> Afghan judges lack reference materials containing practical guidance on how to deal with situations they commonly encounter on the bench, and as a result, their implementation of the law is often criticized.<sup>144</sup> Judge Hashimi used his fellowship to develop a comprehensive benchbook covering all aspects of legal administration that was tailored to Afghanistan’s inquisitorial system and current law.<sup>145</sup> Similar projects have been undertaken by judges and scholars from South Korea, China, Uganda, Brazil, Russia, and Japan.<sup>146</sup>

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136. *Judge Writes First Benchbook for Afghanistan*, *supra* note 44, at 2.

137. *FJC Changes to Serve Judiciary*, *supra* note 114, at 11.

138. *Judge Writes First Benchbook for Afghanistan*, *supra* note 44, at 2.

139. *Id.*

140. *Id.*

141. INT’L JUDICIAL RELATIONS OFFICE, FED. JUDICIAL CTR., VISITING FOREIGN JUDICIAL FELLOWS PROGRAM (2014), [http://www.fjc.gov/public/pdf.nsf/lookup/Visiting-Fellows-Program-Brochure-2014-12.pdf/\\$file/Visiting-Fellows-Program-Brochure-2014-12.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Visiting-Fellows-Program-Brochure-2014-12.pdf/$file/Visiting-Fellows-Program-Brochure-2014-12.pdf) [perma.cc/YBN8-53SH].

142. *See Judge Writes First Benchbook for Afghanistan*, *supra* note 44, at 2.

143. *Id.*

144. *See id.*

145. *Id.*

146. *Id.*

Judicial exchange programs, as the name implies, involve hosting delegations of judges from a foreign country to the United States or sending judges from the United States abroad.<sup>147</sup> These exchanges often consist of meetings with other judges and court officials to discuss administrative and structural aspects of credible and efficient judicial systems.<sup>148</sup> The exchanges have traditionally focused on areas such as procedure, criminal adjudication processes, and court administration.<sup>149</sup> Primarily, exchange programs allow foreign judges to see the effectiveness of the United States court system.<sup>150</sup> Countries that have participated in the exchange program in the past include Britain, Russia, Canada, France, Italy, India, Germany, and Mexico.<sup>151</sup>

The Open World Program, a form of judicial exchange, is co-operated by the Committee and the Library of Congress.<sup>152</sup> Participant judges travel to Washington, D.C. for “a two-day general overview” of the United States judicial system.<sup>153</sup> Afterwards, they have eight days to meet with local judges to understand, to the greatest extent possible during their visit, how U.S. courts work.<sup>154</sup> As with much of the Committee’s work, the Open World Program aims at all actors who ultimately play a role in an effective and transparent judiciary. For example, a 2011 Serbian delegation included a prosecutor, a special prosecutor for the organized crime unit, a trial judge, an attorney, the president of the bar, the chief police officer of the organized crime unit, and a professor from the University of Belgrade School of Law.<sup>155</sup> In addition to studying structural aspects of the U.S. judiciary, the participants observed a mock federal trial.<sup>156</sup>

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147. See Rehnquist, *supra* note 15.

148. *Id.*

149. *Id.*

150. Hall & Mihm, *supra* note 9, at 1168.

151. Rehnquist, *supra* note 15.

152. See 150 CONG. REC. 16,957 (July 21, 2004) (statement of Rep. LaHood) (noting the role of Judge Michael Mihm in designing the judicial education component of the Library of Congress’s Open World program).

153. Smith, *supra* note 11, at 18.

154. *Id.*

155. *Court News & Notes: Serbian Delegates Visit, U.S. CTS.: W. DIST. OF MO.*, [http://www.mow.uscourts.gov/courthouse\\_connection/august\\_2012/news.htm](http://www.mow.uscourts.gov/courthouse_connection/august_2012/news.htm) [perma.cc/K3YZ-47TK] (last visited Oct. 22, 2015).

156. *Id.*

### *B. Curriculum Development*

There is almost no disagreement worldwide that judges, both new and tenured, benefit from orientation, training, and continuing education on the multiple administrative and professional obligations they shoulder. There are, however, vastly different approaches and processes in different jurisdictions; many of those differences reflect the relative resource allocation given judiciaries generally.<sup>157</sup> Until recently, for example, Nigerian judges were given little training for commencement of their duties.<sup>158</sup> Judges in India are given fairly extensive training from several months to a year, depending on the High Court that oversees their training.<sup>159</sup> In Kosovo, judicial training remains nascent.<sup>160</sup> In the United States, newly confirmed judges are given extensive preliminary training and engage at high levels in continuing education activities as well.<sup>161</sup>

#### 1. The Purpose and Aims of Judicial Education Programs

Judicial education norms also vary by size and classification of legal system.<sup>162</sup> Judge Clifford Wallace summarized the state of judicial education globally in this way:

[J]udicial education programs are said to differ depending on whether the legal system is based on civil law or common law. For instance, Paul M. Li argues that in civil law countries, such as France and Spain, judicial education follows the traditional law school model where students enroll in a six- to twenty-seven-month program of lectures to prepare them for judicial service. In contrast, common law countries . . . train judges through the peer group educational model in a continuing legal education context, focusing on ‘learning by doing’ in lieu of the lecture-style of the civil law countries.

In the United States, Congress established the Federal Judicial Center to improve judicial administration in the federal courts. . . .

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157. See J. Clifford Wallace, *Judicial Education and Training in Asia and the Pacific*, 21 MICH. J. INT’L L. 849, 855 (2000).

158. Sande L. Buhai et al., *The Role of Law Schools in Educating Judges to Increase Access to Justice*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 161, 163 (2011).

159. *Id.* at 173.

160. James E. Moliterno, *Some Lessons from the International Judicial Education Front*, 42 MCGEORGE L. REV. 213, 215 (2010–2011).

161. See, e.g., FED. JUDICIAL CTR., *supra* note 117, at 5 (detailing judicial participation in training and continuing education activities).

162. J. Clifford Wallace, *Globalization of Judicial Education*, 28 YALE J. INT’L L. 355, 356–57 (2003).

My survey of judicial education and training in Asia and the Pacific indicates that those countries with small judicial systems (less than 150 judges) tend to conduct little judicial education and generally produce no written resources to help judges. Nations with larger judicial systems generally have established organized judicial education systems. These training programs appear to range from well-established, such as those of Australia, Korea, and Thailand, to still-developing, such as those of Lao PDR, to those programs in a state of transition, such as that of Nepal. Nations with larger judicial systems typically have reserved permanent facilities for the education programs and have produced written judicial aids and recorded education seminars for the judges' use.<sup>163</sup>

The IJRC has worked to develop and encourage curriculum for judicial training programs emphasizing the nexus between a judiciary forming and implementing its own education programs and judicial independence generally.<sup>164</sup> As Judge Wallace has noted, the judicial branch of any government has the most interest in the success of judicial education programs.<sup>165</sup> Just as the Committee and individual member judges have contributed to the conceptual debate as to what the rule of law is, the Committee's work has arguably left an even deeper impression on judicial education as a result of the inevitable comparisons that emerge from education, exchange, and training activities.

An early example of the Committee's contribution to transnational curriculum is the development of the program for the Conference of the Supreme Courts of the Americas, which became the model for much of the Committee's educational programming.<sup>166</sup> The Committee not only invited representatives from national high courts but also participants who played key roles in debates on judicial reform and improvement.<sup>167</sup> Participants provided brief overviews of their respective legal systems and then broke into small group teams to discuss strengths, weaknesses, opportunities, and challenges of each judicial system.<sup>168</sup> The Committee made use of

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163. *Id.* (footnotes omitted).

164. *FJC Changes to Serve Judiciary*, *supra* note 114, at 11.

165. Wallace, *supra* note 157, at 858.

166. Hall & Mihm, *supra* note 9, at 1181.

167. *Id.* at 1182.

168. *Id.*



multiple media formats for its formal presentations, using both written and video publications presented in Spanish.<sup>169</sup> The topics included a review of mechanisms to ensure judicial independence; the role of the judiciary in promoting access to courts and fair dispute resolution procedures; “the likely impact of forces such as population growth, scientific discoveries, technological innovations and integration of countries on the judicial process”; judicial ethics; and the relationship between national courts and international tribunals.<sup>170</sup>

Participants visited courtrooms at appellate and trial levels and met with court officials, prosecutors, defense attorneys, law school faculty, and bar associations.<sup>171</sup> The conference programming also included a criminal trial demonstration.<sup>172</sup> The Committee opted to include this aspect following statements of interest in oral procedures for judges who are not familiar with the adversarial system.<sup>173</sup>

## 2. Substantive Law Curriculum

The Committee has also developed education and training materials covering specific substantive areas of law.<sup>174</sup> Many countries transitioning from command to market economies, for example, requested assistance in bankruptcy law.<sup>175</sup> Recently, the Committee has participated in the Global Counterterrorism Forum, an informal, multilateral platform that focuses on identifying critical civilian needs, mobilizing the necessary expertise and resources to address such needs, and enhance global cooperation.<sup>176</sup> In November

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169. *Id.*

170. Torruella & Mihm, *supra* note 132, at 973.

171. Hall & Mihm, *supra* note 9, at 1182.

172. Torruella & Mihm, *supra* note 132, at 973.

173. *Id.* at 975.

174. Rehnquist, *supra* note 15 (“Traditionally, international judicial exchanges have focused on such areas as constitutional law, procedure, criminal law, the jury system, judicial independence and court administration. And the judiciary participants from our federal courts have most often been judges on the regional Courts of Appeals or the District Courts. But with the growth in global commerce and technology, the areas within the jurisdiction and expertise of the Federal Circuit have become more and more topical for international exchanges. As new judicial systems get past the initial efforts to put basic rules and systems in place, they become able to focus on areas such as patent and trade law.”).

175. Hall & Mihm, *supra* note 9, at 1168–69.

176. *Co-Chair’s Fact Sheet: About the Global Counterterrorism Forum*, U.S. DEP’T ST.: IIP DIGITAL, (Dec. 14, 2012), <http://iipdigital.usembassy.gov/st/english/texttrans/2012/12/20121214140013.html#axzz38zdJhmvx> [perma.cc/7Q9X-SQCQ]. “The GCTF is

2013, the forum focused on sharing experiences and developing best practices for handling the complexities of cases involving matters of national security and counterterrorism and included participants from over seventeen countries.<sup>177</sup> Judges who had handled national security cases addressed the management of classified and intelligence-derived evidence and outlined the pertinent issues and practices developed to address those issues and the characteristics of court systems able to try special cases in a timely and efficient manner.<sup>178</sup>

### 3. Establishing Judicial Education Programs

The Committee focuses not only on substantive development of legal and judicial curriculum, it has also made substantial progress toward administrative and logistical aspects of establishing a judicial education program and ensuring its use and improvement. Judicial education programs must identify and find ways to overcome impediments to effective judicial education,<sup>179</sup> which include lack of funding and other resources;<sup>180</sup> prohibitive public policies, traditions, or beliefs that judges do not require additional or continuous education;<sup>181</sup> and the perception of some judges that they are not qualified to teach.<sup>182</sup> The Committee has persistently conveyed the theme that judges are often the most effective teachers for issues like the fine tuning of trial skills, case management, avoiding bias, and

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an informal, multilateral counterterrorism (CT) platform that focuses on identifying critical civilian [counterterrorism] needs, mobilizing the necessary expertise and resources to address such needs and enhance global cooperation.” *Id.* It was launched by the Turkish Foreign Minister and the U.S. Secretary of State in 2011 and has thirty founding members. It brings together experts from around the world to address counterterrorism challenges, devise solutions, and mobilize resources. The GCTF consists of a Coordinating Committee, an administrative unit, and five expert-driven working groups: the criminal justice sector and the rule of law, countering violent extremism, capacity building in the Sahel, capacity building in the Horn of Africa, and capacity building in Southeast Asia.

177. Office of the Spokesperson, *supra* note 7.

178. Gurule, *supra* note 22; see also *ABA ROLI Assists with Judicial Reforms in Bahrain*, A.B.A. (Mar. 2012), [http://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/middle\\_east/bahrain/news/news\\_bahrain\\_detention\\_procedure\\_assessment\\_0312.html](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/bahrain/news/news_bahrain_detention_procedure_assessment_0312.html) [perma.cc/TH7U-SFFY].

179. Wallace, *supra* note 157, at 855.

180. *Id.*

181. *Id.*

182. *Id.* at 856.

mediation.<sup>183</sup> Aside from inherent strengths of using judges as teachers, the education literature generally supports the notion that peer group or participatory methods used by teachers increase the likelihood that judicial learners will actually apply the lessons in their judicial capacity.<sup>184</sup> The Committee has also developed extensive materials as to how a judicial education program may adopt a range of incentives for judges to maintain high participation in judicial training while at the same time retaining its voluntary nature.<sup>185</sup>

#### 4. The Committee's Contributions to Experiential and Observational Learning

The Committee has also incorporated experiential and observational curricular innovations in partnership with universities and law schools. The Committee runs the Judicial Observation Program for International Law Students, Lawyers, and Judges.<sup>186</sup> This program works with law schools<sup>187</sup> and matches participants with federal and state judges in order to learn about the United States' judiciary and democratic process.<sup>188</sup> It is primarily focused on international LL.M. students, who are funded from sources outside of the Committee,<sup>189</sup> and spend several hours every week with one or more assigned judges.<sup>190</sup> The goal of this program is to encourage the development of democracy and the rule of law by giving international

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183. *See id.*

184. John R. Tunheim, *Judges and the Rule of Law in Transitional Nations*, JUDGES' J., Summer 2003, at 17, 19–20 (“What works best? In my experience, nothing is better than judge-to-judge dialogue. Sharing ideas, discussing why certain procedures are followed, understanding the lives and histories of judges, demonstrating how to do basic tasks like developing a record, and just plain talking and telling stories of life on the bench. The time is valuable and I learn so much from these discussions.”).

185. MARTIN PARTINGTON & CHLOË SMYTHE, THE DEVELOPMENT OF PROFESSIONAL LEGAL AND JUDICIAL EDUCATION IN QATAR 62–63 (2012), <http://www.qicdrc.com.qa/PDF/Qatar%20report%20English.pdf> [perma.cc/VD7M-WK C3]. In many judicial systems, including the U.S. system, one may not “force” judges to participate in continuing education.

186. Fine, *supra* note 40, at 4.

187. Bright, *supra* note 13, at 47.

188. Fine, *supra* note 40, at 4.

189. Bright, *supra* note 13, at 47–48.

190. *Id.* at 49.

students access to the United States court system,<sup>191</sup> as well as to help law schools improve and expand their LL.M. curricula.<sup>192</sup>

Like many of the Committee's innovations, the Judicial Observation Program takes a broad view toward the constituencies who ultimately play a role in the rule of law, working with international law students, lawyers, and court officials such as court clerks, court reporters, and probations officers as well as judges.<sup>193</sup> Through its Taskforce on Education (the Taskforce), the Committee focuses on programs for students from developing countries who intend to return home after completing their education.<sup>194</sup> The Taskforce has developed a diverse range of curricular options to meet the wide-ranging legal systems and resource availability of participants including an academic credit model, an internship model, and an informal model that accommodates desiring and qualified participants who are unable to participate in a formal degree program or dedicate an entire summer to study in the United States.<sup>195</sup> This flexibility works in significant part because law schools are able to develop programs that meet their academic standards and requirements as well as provide an experience that fits the needs of all the participants, regardless of its form.<sup>196</sup>

In the academic credit model, students earn one or two credits for their participation in the Judicial Observation Program.<sup>197</sup> Students earning two credits spend ten to fifteen hours per month observing court proceedings, and students earning one credit spend less than ten hours per month observing.<sup>198</sup> Participants are selected based on academic interest in the program, professional background, and English-language proficiency.<sup>199</sup> Unless a student expresses an interest in a particular area, students are randomly paired with participating judges, and they have the

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191. *Id.* at 48.

192. *Id.* at 47–48.

193. See ASS'N OF AM. LAW SCHS., ANNUAL MEETING, FINANCIAL REPORT, AND OTHER ASSOCIATION INFORMATION 365 (2001); COMM. ON INT'L JUDICIAL RELATIONS, U.S. JUDICIAL CONFERENCE, JUDICIAL OBSERVATION PROGRAM FOR FOREIGN LAW STUDENTS, LAWYERS, AND JUDGES 4 (2003); Bright, *supra* note 13, at 47–49.

194. ASS'N OF AM. LAW SCHS., *supra* note 193, at 365; COMM. ON INT'L JUDICIAL RELATIONS, *supra* note 193, at 4.

195. COMM. ON INT'L JUDICIAL RELATIONS, *supra* note 193, at 4–5.

196. See ASS'N OF AM. LAW SCHS., *supra* note 193, at 365; COMM. ON INT'L JUDICIAL RELATIONS, *supra* note 193, at 5.

197. COMM. ON INT'L JUDICIAL RELATIONS, *supra* note 193, at 14–15.

198. *Id.* at 15–16.

199. *Id.* at 9.

opportunity to observe proceedings in their judge's courtroom as well as the courtrooms of other participating judges.<sup>200</sup> Participants are also required to turn in a written report of his or her experiences in a journal format.<sup>201</sup> In the internship model, students are paired with judges to observe court proceedings for either the summer, fall, or spring term.<sup>202</sup> Some students elect to complete written projects about their experiences, while others prepare presentations for court personnel and law clerks about the legal systems of their own countries.<sup>203</sup> In the informal model, the Judicial Observation Program is not incorporated into the participating school's formal curriculum.<sup>204</sup> Participants are assigned a "judge-mentor" and observe court proceedings for approximately three hours per week.<sup>205</sup> Students are also provided with presentations by legal and law enforcement facilities in the area such as the district attorney's office, the public defender's office, probation officers, and the local FBI office.<sup>206</sup>

Judicial Observation Program placements are made through reaching out to courts through existing clerkship and internship relationships allowing law students to take tours, intern, or participate in clinical legal programs.<sup>207</sup> Schools may contact the Taskforce to identify judges with an interest in international issues, developing curriculum for the program, and providing administrative suggestions.<sup>208</sup> The priority in any program is an ethics orientation to inform students of expectations regarding confidentiality, conflicts of interest, and other topics, as well as give them an opportunity to ask questions about legal ethics and the consequences of breaching ethical rules.<sup>209</sup> The Taskforce recommends using the Judicial Code of Conduct and the Code of Conduct for Judicial Employees as guides.<sup>210</sup>

The Taskforce has also generated recommendations as to core aspects of the federal and state judiciary that will provide an effective background

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200. *Id.* at 15.

201. *Id.* at 16.

202. *Id.* at 8.

203. *Id.* at 16.

204. *See id.*

205. *Id.* at 8.

206. *Id.*

207. *Id.* at 7.

208. *Id.*

209. *See id.* at 8, 18.

210. *See id.* at 18, 29.

for understanding the judicial role in the United States. For example, the Taskforce suggests that schools include both an appellate component as well as a state court component in the program.<sup>211</sup> An appellate component allows students to focus on legal research, written advocacy, oral advocacy, and the appellate decision-making process. For appellate observation, the Taskforce recommends that programs allow students to focus on written advocacy and the process occurring in the judges' chambers, as well as oral advocacy and decisions.<sup>212</sup> The former should include the process of filing an appeal and appellate briefs, viewing the record of the lower court, research, and bench memoranda.<sup>213</sup> The latter should include arguments before the panel, conferences, opinion writing, and the post-decision process.<sup>214</sup> Observing state courts allow international students to see how processes differ for courts that face a higher caseload as well as the administrative differences between state and federal courts.<sup>215</sup>

### C. Judicial Impartiality

The research of the Committee and its members has also made contributions to determining the characteristics of judicial impartiality, a subject tied closely to judicial independence.<sup>216</sup> In the new democracies with which the Committee often engages, this is an aspect of the judiciary that must be developed over time as judges and courts gain the confidence and respect of the government and the citizens.<sup>217</sup> Committee members (not necessarily representing the Committee as a whole) have identified four elements which foster judicial independence: (1) "the constitutional protections of the judge's office,"<sup>218</sup> (2) judicial control over court procedure and

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211. See ASS'N OF AM. LAW SCHS., *supra* note 193, at 365; COMM. ON INT'L JUDICIAL RELATIONS, *supra* note 193, at 7.

212. COMM. ON INT'L JUDICIAL RELATIONS, *supra* note 193, at 22–25.

213. *Id.* at 22–24.

214. *Id.* at 24–25.

215. See *id.* at 7.

216. Mary L. Volcansek, *Appointing Judges the European Way*, 34 FORDHAM URB. L.J. 363, 365 (2007) ("Judicial independence and judicial impartiality are, in some ways, flip sides of the same coin; neither can survive without the other.").

217. Hall & Mihm, *supra* note 9, at 1173.

218. Torruella & Mihm, *supra* note 132, at 974.

administration,<sup>219</sup> (3) judicial transparency,<sup>220</sup> and (4) the establishment and enforcement of a judicial code of ethics.<sup>221</sup>

While the initial observation, constitutional protection of the judge's office, is the most clearly self-evident, it is also the most essentially tied to the political organization and prevailing norms within the foreign judiciaries with whom the Committee works. Because of the politically sensitive nature of constitutional and legal judicial protection, the Committee has tended to respect judicial organizations' constitutional statuses as it finds them.<sup>222</sup> As Paul Magnuson noted, "[T]he Committee would never purport to represent the only correct approach to the administration of justice [is our own]."<sup>223</sup>

With respect to judicial control over court procedure and administration, however, the Committee has developed substantial recommendations based on the U.S. experience. First, judicial impartiality is best protected when the judiciary controls administrative or advisory councils that inform court procedure and administration processes or reforms.<sup>224</sup> Second, the judiciary must have adequate funding and participate in the funding process to ensure that judges may avoid dependence on irregular or frequent requests from government officials to operate.<sup>225</sup> One example of the impact of the Committee on the expansion of judicial impartiality is through its educational efforts with judges from the Russian Federation.<sup>226</sup> Since the time when the Committee first made contact with Russia's judges, the judiciary has separated itself from the Ministry of Justice, and it has created an independent judicial administration system.<sup>227</sup> Through its administration system, the

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219. *Id.*

220. See Smith, *supra* note 11, at 11; Torruella & Mihm, *supra* note 132, at 974–75.

221. See Smith, *supra* note 11, at 11; Torruella & Mihm, *supra* note 132, at 980–82.

222. See Tunheim, *supra* note 184, at 19.

223. *International Courts Tap Judicial Expertise*, *supra* note 14, at 10.

224. Torruella & Mihm, *supra* note 132, at 979.

225. *Id.* at 980.

226. Hall & Mihm, *supra* note 9, at 1180–81.

227. Under the Soviet system, the procurator, essentially an executive branch official, and subordinate procurators were the primary investigator and decision-maker in the "execution of the laws of the USSR, the RSFSR, and autonomous republics in criminal proceedings." UGOLOVNO-PROTSESSUAL'NYI KODEKS ROSSIJSKOI FEDERATSII [UPK RF] [Criminal Procedural Code] art. 25 (Russ.), *translated in* THE SOVIET CODES OF LAW 169 (William B. Simons ed., Harold J. Berman & James W.

judiciary can now enforce the judgments of the courts—something that was not possible before—and they have a separate administrative bureaucracy devoted to the judiciary.<sup>228</sup> In addition, they have developed the Council of Judges for the Russian Federation, which is the equivalent of the United States’ Judicial Conference, and a Congress of Judges to support the interests of the judiciary.<sup>229</sup> Indeed, the independence of the judiciary in Russia has persisted through several regimes that varied significantly in their perspective on executive prerogative.<sup>230</sup>

Judicial transparency is another necessary element to establish judicial impartiality. Transparency discourages appointment systems based on patronage and politics, rather than on fitness for service, by allowing input from the bar and citizen groups regarding appointments and elections.<sup>231</sup> Employing written, published opinions encourages transparency, even in civil law systems that do not follow *stare decisis*, by allowing judges to apply the law consistently and gain the trust of the community.<sup>232</sup> Proper press and media management is also essential for judicial transparency; by learning how to interact with the media effectively, judges discourage bribery, coercion, and other inappropriate behavior by exposing it to public opinion.<sup>233</sup> Effective press usage also makes judicial procedure

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Spindler trans., 1980). In 1993, the Russian Constitution declared that “judicial proceedings shall be conducted based on adversarial principles and equality of the parties.” William Burnham & Jeffrey Kahn, *Russia’s Criminal Procedure Code Five Years Out*, 33 REV. CENT. & E. EUR. L. 1, 3 (2008) (quoting KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 123(3) (Russ.)). In 2001, judicial oversight over the criminal process was included in the Criminal Procedure Code of the Russian Federation. See *id.* at 11, 46.

228. Leandro Despouy (Special Rapporteur on the Independence of Judges and Lawyers), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶¶ 23, 28, U.N. Doc. A/HRC/11/41/Add.2 (Mar. 23, 2009), [http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41.Add.2_en.pdf) [perma.cc/YEH4-BQTG].

229. *Id.* ¶ 17.

230. *UN Expert Urges Russian Authorities to Address Concerns Over Independence and Impartiality of the Judiciary*, U.N. OFF. HIGH COMMISSIONER FOR HUM. RTS. (Apr. 25, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13267&LangID=E#sthash.ofbOjAXE.dpuf>; [perma.cc/Z53P-QP2F]; see also Will Pomeranz, *Russia’s Fading Judiciary*, NAT’L INT. (Oct. 28, 2013), <http://nationalinterest.org/commentary/russias-fading-judiciary-9313> [perma.cc/38CX-Y629].

231. Smith, *supra* note 11, at 11–12.

232. *Id.* at 12.

233. Torruella & Mihm, *supra* note 132, at 982.



available to the public and may be used to impart the importance of judicial independence to the administration of justice to the community.<sup>234</sup> Relatedly, judges must exercise caution and not allow their own decisions to be influenced by pressure from the press or public opinion.<sup>235</sup>

The Committee and its members place great weight on the establishment of a judicial code of ethics and mechanisms for enforcing this code as a way to gain judicial independence.<sup>236</sup> A code of ethics serves as a guide to judges, informing them what activities and conduct are not proper, and like judicial transparency, it improves public trust by creating confidence in the integrity of the judiciary.<sup>237</sup> While the Committee's programs in some developing countries highlight the usefulness of a written ethics code,<sup>238</sup> not all judges believe that a formal, written code is necessary.<sup>239</sup> Some judges feel the judiciary would be better served by promoting the teaching of ethics to all university students through constitutional mandate, or, in some jurisdictions, by ensuring that judges are provided with sufficient salaries.<sup>240</sup>

In addition to the code itself, the judiciary and the legal community must have practical mechanisms in place to deal with unfit or incapable judges and for guarding against conflicts of interest.<sup>241</sup> This can be accomplished, at least in part, by establishing an effective appointment system which avoids undue political pressure on judges, either through the appointment process itself or by other means such as constitutional protection.<sup>242</sup> Like the form of the code of ethics, judges from different jurisdictions differ on the best method of judicial appointment, suggesting executive appointment, appointment by independent counsels, election, and selection by the courts.<sup>243</sup> While the Committee conveys the usefulness and positive experience with the Code of Conduct for

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234. *Id.*

235. *Id.*

236. Smith, *supra* note 11, at 11.

237. *Id.*

238. *Id.*

239. Torruella & Mihm, *supra* note 132, at 981.

240. *Id.*

241. *Id.* at 974.

242. *Id.* at 980–81.

243. *Id.*

United States Judges during its exchanges, it also emphasizes supplementary mechanisms like the federal judiciary's Code of Conduct Committee that allows questions to be submitted on ethical gray zones, receive full analysis, circulation of opinions, and ultimately guidance, which provides a safe haven for judges facing difficult ethical questions.<sup>244</sup>

*D. The IJRC's Processes for Building Institutional Knowledge*

The Committee not only oversees a wide range of research and education activities related to judicial administration, judicial curriculum, and judicial impartiality, it also persistently reviews its materials, solicits feedback from program participants, and stores judges' experiences and reports in an Institutional Knowledge e-Library.<sup>245</sup> When a judge participates in an exchange, travels abroad, gives a lecture or seminar, or otherwise works for the Committee, that judge writes a report that is stored in the library.<sup>246</sup> Judges then may authorize (or not) that report to be used for a future or alternative judicial education program.<sup>247</sup> This has been a tremendous resource for the Committee because the Committee may receive several requests from the same country over a long time period and the existing resource helps prepare judges for future programs as well as generally building knowledge and networks.<sup>248</sup>

Thus the full range of the Committee's activities is consistent with the purpose and mission of the Federal Judicial Center generally. While the Committee does "coordinate" the judiciary's relations with foreign requests for assistance consistent with its mandate, it also does so with a persistent focus on the research and education that characterize other activities undertaken by the judiciary in cooperation with the Federal Judicial Center.

Indeed, it is for this reason that we encourage future researchers and participants of the Committee to understand it as a scholarly organization committed to fulfilling its mandate in a way that builds understanding of good judicial systems generally and the U.S. system specifically. As D. Brooks Smith phrased it, "[b]y sending American judges to other

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244. Interview with Judge Robert Henry, *supra* note 59.

245. See Michael M. Mihm, *International Judicial Relations Committee Promotes Communication, Coordination*, INT'L JUD. OBSERVER, Sept. 1995, at 1, 1 (noting the Committee's collection of trip reports).

246. Lawrence, *supra* note 89, at 677.

247. See Mihm, *supra* note 245, at 4.

248. Interview with Judge Robert Henry, *supra* note 59.

countries, those judges necessarily come to know about other legal systems.”<sup>249</sup> Doing so sharpens important lessons about the U.S. judicial system and assists the Judicial Conference in its fundamental objective, “to make policy for the administration of the U.S. courts.”<sup>250</sup>

According to one member of the Committee, participation in rule-of-law initiatives imparts at least two benefits. First, American judges who participate a better understanding of the complexities of the U.S. judicial system because explaining it to others requires that judges articulate and make explicit the system’s principles and processes.<sup>251</sup> Second, participation requires a certain introspection that, itself, promotes deeper understanding of how the U.S. judicial system operates on a day-to-day, as well as a constitutional, level.<sup>252</sup> This introspective process is given particular meaning when judges observe the resource and bureaucratic constraints that influence judicial systems in less developed, or even middle income, countries. Even before the collapse of the Soviet Union, Congress amended the Federal Judicial Center’s implementing legislation to include a mandate to “provide information to help improve the administration of justice in foreign countries and to acquire information about the judicial systems of other nations that will improve the administration of justice in the courts of the United States.”<sup>253</sup>

## V. CONCLUSION

In this Article, we have examined the role of the Judicial Conference Committee on International Judicial Relations as it pertains to learning and growing the body of research about judicial administration, judicial education curricula, and the characteristics of judicial impartiality. By doing so, we believe we have added a useful lens through which future scholars may evaluate the Committee’s activities as well as understanding how the formation of the Committee fits within a longer trend in U.S. constitutional history by which the Legislative, Executive, and Judicial

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249. Smith, *supra* note 11, at 21–22.

250. Scirica, *supra* note 103, at 28.

251. See William H. Rehnquist, *2000 Year-End Report on the Federal Judiciary*, 25 AM. J. TRIAL ADVOC. 1, 8 (2001).

252. Volcansek, *supra* note 216, at 367 (“Despite the disinclination to seek out alternative modes for naming judges as employed in other places, sometimes taking a comparative view helps us to see our own system more clearly or, as philosophers have long taught us, ‘knowledge of the self is gained through knowledge of others.’” (quoting MATTEI DOGAN & DOMINIQUE PELASSY, *HOW TO COMPARE NATIONS: STRATEGIES IN COMPARATIVE POLITICS* 5 (2d ed. 1990))).

253. Gur-Arie, *supra* note 1, at 24.

Branches, working together, but within their appropriate limits, have sought to encourage the judiciary to constantly strive to learn and adapt so as to fulfill their constitutional roles in the most efficacious, transparent, and democratic way.<sup>254</sup>

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254. See Janet Koven Levit, *Sanchez-Llamas v. Oregon: The Glass Is Half Full*, 11 LEWIS & CLARK L. REV. 29, 33–34 n.17 (2007) (noting the benefits for state court judges as well as federal judges).